

## STATUTORY INSTRUMENTS

### 2010 No. 93 TERMS AND CONDITIONS OF EMPLOYMENT The Agency workers Regulations 2010 amended by The Agency Workers (Amendment) Regulations 2011

Made - 20th January 2010

Laid before Parliament 21st January 2010

Coming into force 1st October 2011

#### CONTENTS

##### PART 1 General and Interpretation

1. Citation, commencement and extent
2. Interpretation
3. The meaning of **agency worker**
4. The meaning of **temporary work agency**

##### PART 2 Rights

5. Rights of **agency workers** in relation to the basic working and **employment** conditions
6. Relevant terms and conditions
7. Qualifying period
8. Completion of the qualifying period and continuation of the regulation 5 rights
9. Structure of **assignments**
10. Permanent contracts providing for pay between **assignments**
11. Calculating the minimum amount of pay
12. Rights of **agency workers** in relation to access to collective facilities and amenities
13. Rights of **agency workers** in relation to access to **employment**

##### PART 3 Liability, Protections and Remedies

14. Liability of **temporary work agency** and **hirer**
15. Restrictions on contracting out
16. Right to receive information
17. Unfair dismissal and the right not to be subjected to detriment
18. Complaints to **employment** tribunals etc
19. Calculating a week's pay
20. Liability of **employers** and principals

##### PART 4 Special Classes of Person

21. Crown **employment** and service as a member of the armed forces
22. House of Lords staff
23. House of Commons staff
24. Police service

##### PART 5 Amendments to legislation

25. Amendments to legislation

SCHEDULE 1 PROVISIONS EXTENDING TO ENGLAND AND WALES, SCOTLAND AND NORTHERN IRELAND

SCHEDULE 2 CONSEQUENTIAL AMENDMENTS

PART 1 PRIMARY LEGISLATION

PART 2 OTHER LEGISLATION

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>1</sup> in relation to **employment** rights and duties<sup>2</sup>. The Secretary of State makes these Regulations—

- (a) in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 15(1), (2) and (5) and 82(3) of, and paragraphs 7, 8 and 15(1) of Schedule 3 to, the Health and Safety at Work etc Act 1974<sup>3</sup>, (“the 1974 Act”); and
- (b) independently of any proposals submitted by the Health and Safety Executive under section 11(3) of the 1974 Act.

The Secretary of State has consulted the Health and Safety Executive and such other bodies as appear to the Secretary of State to be appropriate, as required by section 50(1AA) of the 1974 Act<sup>4</sup>.

---

<sup>1</sup> 1972 c.68

<sup>2</sup> SI 2000/738

<sup>3</sup> 1974 c.37. Section 15(1) was substituted by the **Employment** Protection Act 1975 (c.71), section 116 and Schedule 15, paragraph 6 and amended by SI 2002/794, article 5(2) and Schedule 2. Section 82(3)(b) was amended by the Railways and Transport Safety Act 2003 (c.20), section 105(3)(a).

<sup>4</sup> Section 50(1AA) was inserted by SI 2008/960, articles 3 16(1) and (2).

## PART 1 General and Interpretation

### 1 Citation, commencement and extent

(1) These Regulations may be cited as the **Agency workers** Regulations 2010 and shall come into force on 1st October 2011.

(2) These Regulations extend to England and Wales and Scotland only, save as provided for in Schedule 1 (provisions extending to England and Wales, Scotland and Northern Ireland).

### 2. Interpretation

In these Regulations—

“the **1996 Act**” means the **Employment** Rights Act 1996<sup>5</sup>;

“**assignment**” means a period of time during which an **agency worker** is supplied by one or more temporary work agencies to a **hirer** to work temporarily for and under the supervision and direction of the **hirer**;

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

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

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

“**employment**”—

(a) in relation to an **employee**, means **employment** under a **contract of employment**,  
and

(b) in relation to a **worker**, means **employment** under that **worker**'s contract,

and “**employed**” shall be construed accordingly;

“**hirer**” means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person; and

“**worker**” means an individual who is not an **agency worker** but 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,

and any reference to a **worker**'s contract shall be construed accordingly.

---

<sup>5</sup> 1996 c.18.

### 3 The meaning of agency worker

(1) In these Regulations "agency worker" means an individual who—

(a) is supplied by a **temporary work agency** to work temporarily for and under the supervision and direction of a **hirer**; and

(b) has a contract with the **temporary work agency** which is—

(i) a **contract of employment** with the agency, or

(ii) any other contract **with the agency** to perform work and services personally ~~for the agency~~.

(2) But an individual is not an **agency worker** if—

(a) the contract the individual has with the **temporary work agency** has the effect that the status of the agency is that of a client or customer of a profession or business undertaking carried on by the individual; or

(b) there is a contract, by virtue of which the individual is available to work for the **hirer**, having the effect that the status of the **hirer** is that of a client or customer of a profession or business undertaking carried on by the individual.

(3) For the purposes of paragraph (1)(a) an individual shall be treated as having been supplied by a **temporary work agency** to work temporarily for and under the supervision and direction of a **hirer** if—

(a) the **temporary work agency** initiates or is involved as an intermediary in the making of the arrangements that lead to the individual being supplied to work temporarily for and under the supervision and direction of the **hirer**, and

(b) the individual is supplied by an intermediary, or one of a number of intermediaries, to work temporarily for and under the supervision and direction of the **hirer**.

(4) An individual treated by virtue of paragraph (3) as having been supplied by a **temporary work agency**, shall be treated, for the purposes of paragraph (1)(b), as having a contract with the **temporary work agency**.

(5) An individual is not prevented from being an **agency worker**—

(a) because the **temporary work agency** supplies the individual through one or more intermediaries;

(b) because one or more intermediaries supply that individual;

(c) because the individual is supplied pursuant to any contract or other arrangement between the **temporary work agency**, one or more intermediaries and the **hirer**;

(d) because the **temporary work agency** pays for the services of the individual through one or more intermediaries; or

(e) because the individual is **employed** by or otherwise has a contract with one or more intermediaries.

(6) Paragraph (5) does not prejudice the generality of paragraphs (1) to (4).

4. **The meaning of temporary work agency**

(1) In these Regulations "**temporary work agency**" means a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of—

(a) supplying individuals to work temporarily for and under the supervision and direction of **hirers**; or

(b) paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of **hirers**.

(2) Notwithstanding paragraph (1)(b) a person is not a **temporary work agency** if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for **hirers**.

## PART 2 Rights

### 5. Rights of agency workers in relation to the basic working and employment conditions

(1) Subject to regulation 7, an **agency worker** (A) shall be entitled to the same basic working and **employment** conditions as A would be entitled to for doing the same job had A been recruited by the **hirer**—

- (a) other than by using the services of a **temporary work agency**; and
- (b) at the time the qualifying period commenced.

(2) For the purposes of paragraph (1), the basic working and **employment** conditions are —

- (a) where A would have been recruited as an **employee**, the relevant terms and conditions that are ordinarily included in the contracts of **employees** of the **hirer**;
- (b) where A would have been recruited as a **worker**, the relevant terms and conditions that are ordinarily included in the contracts of **workers** of the **hirer**,

whether by collective agreement or otherwise, including any variations in those relevant terms and conditions made at any time after the qualifying period commenced.

(3) Paragraph (1) shall be deemed to have been complied with where—

- (a) an **agency worker** is working under the same relevant terms and conditions as an **employee** who is a comparable **employee**, and
- (b) the relevant terms and conditions of that comparable **employee** are terms and conditions ordinarily included in the contracts of **employees**, who are comparable **employees** of the **hirer**, whether by collective agreement or otherwise.

(4) For the purposes of paragraph (3) an **employee** is a comparable **employee** in relation to an **agency worker** if at the time when the breach of paragraph (1) is alleged to take place—

- (a) both that **employee** and the **agency worker** are—
  - (i) working for and under the supervision and direction of the **hirer**, and
  - (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills; and
- (b) the **employee** works or is based at the same establishment as the **agency worker** or, where there is no comparable **employee** working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.

(5) An **employee** is not a comparable **employee** if that **employee's** **employment** has ceased.

(6) This regulation is subject to regulation 10.

## 6 Relevant terms and conditions

(1) In regulation 5(2) and (3) “relevant terms and conditions” means terms and conditions relating to—

- (a) pay;
- (b) the duration of **working time**;
- (c) **night work**;
- (d) **rest periods**;
- (e) rest breaks; and
- (f) annual leave.

(2) For the purposes of paragraph (1)(a), “pay” means any sums payable to a **worker** of the **hirer** in connection with the **worker’s employment**, including any fee, bonus, commission, holiday pay or other emolument referable to the **employment**, whether payable under contract or otherwise, but excluding any payments or rewards within paragraph (3).

(3) Those payments or rewards are—

- (a) any payment by way of occupational sick pay;
- (b) any payment by way of a pension, allowance or gratuity in connection with the **worker’s** retirement or as compensation for loss of office;
- (c) any payment in respect of maternity, paternity or adoption leave;
- (d) any payment referable to the **worker’s** redundancy;
- (e) any payment or reward made pursuant to a **financial participation scheme**;
- (f) any bonus, incentive payment or reward which is not directly attributable to the amount or quality of the work done by a **worker**, and which is given to a **worker** for a reason other than the amount or quality of work done such as to encourage the **worker’s** loyalty or to reward the **worker’s** long-term service;
- (g) any payment for time off under Part 6 of the **1996 Act** or section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>6</sup> (payment for time off for carrying out trade union duties etc);
- (h) a guarantee payment under section 28 of the **1996 Act**;
- (i) any payment by way of an advance under an agreement for a loan or by way of an advance of pay (but without prejudice to the application of section 13 of the **1996 Act** to any deduction made from the **worker’s** wages in respect of any such advance);
- (j) any payment in respect of expenses incurred by the **worker** in carrying out the **employment**; and
- (k) any payment to the **worker** otherwise than in that person’s capacity as a **worker**.

(4) For the purposes of paragraphs (2) and (3) any monetary value attaching to any payment or benefit in kind furnished to a **worker** by the **hirer** shall not be treated as pay of the **worker** except any voucher or stamp which is—

- (a) of fixed value expressed in monetary terms, and
- (b) capable of being exchanged (whether on its own or together with other vouchers, stamps or documents, and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things).

(5) In this regulation—

“**financial participation scheme**” means any scheme that offers **workers** of the **hirer**—

- (a) a distribution of shares or options, or

---

<sup>6</sup> 1992 c.52; section 169 was amended by the **Employment Act 2002** (c.31), sections 43 (1) and (3).

(b) a share of profits in cash or in shares;

“**night time**”, in relation to an individual, means—

(a) a period—

(i) the duration of which is not less than seven hours, and

(ii) which includes the period between midnight and 5 a.m.,

which is determined for the purposes of these Regulations by a **working time agreement**, or

(b) in default of such a determination, the period between 11 p.m. and 6 a.m.;

“**night work**” means work during **night time**;

“**relevant training**” means work experience provided pursuant to a training course or programme, training for **employment**, or both, other than work experience or training—

(a) the immediate provider of which is an educational institution or a person whose main business is the provision of training, and

(b) which is provided on a course run by that institution or person;

“**rest period**”, in relation to an individual, means a period which is not **working time**, other than a rest break or leave to which that individual is entitled either under the **Working time Regulations 1998**<sup>7</sup> or under the contract between that individual and the **employer** of that individual;

“**working time**”, in relation to an individual means—

(a) any period during which that individual is working, at the disposal of the **employer** of that individual and carrying out the activity or duties of that individual,

(b) any period during which that individual is receiving **relevant training**, and

(c) any additional period which is to be treated as **working time** for the purposes of the **Working time Regulations 1998** under a **working time agreement**; and

“**working time agreement**”, in relation to an individual, means a workforce agreement within the meaning of regulation 2(1) of the **Working time Regulations 1998**, which applies to the individual any provision of—

(a) a collective agreement which forms part of a contract between that individual and the **employer** of that individual, or

(b) any other agreement in writing which is legally enforceable as between the individual and the **employer** of that individual.

---

<sup>7</sup> S.I. 1998/1833, amended by S.I. 2001/3256, S.I. 2002/3128 and S.I. 2007/2079. There are other amending instruments but none is relevant.

## 7 Qualifying period

- (1) Regulation 5 does not apply unless an **agency worker** has completed the qualifying period.
- (2) To complete the qualifying period the **agency worker** must work in the same role with the same **hirer** for 12 continuous calendar weeks, during one or more **assignments**.
- (3) For the purposes of this regulation and regulations 8 and 9, the **agency worker** works in “the same role” unless—
  - (a) the **agency worker** has started a new role with the same **hirer**, whether supplied by the same or by a different **temporary work agency**;
  - (b) the work or duties that make up the whole or the main part of that new role are substantively different from the work or duties that made up the whole or the main part of the previous role; and
  - (c) the **temporary work agency** has informed the **agency worker** in writing of the type of work the **agency worker** will be required to do in the new role.
- (4) For the purposes of this regulation and regulation 10, any week during the whole or part of which an **agency worker** works during an **assignment** is counted as a calendar week.
- (5) For the purposes of this regulation and regulations 8 and 9, when calculating whether any weeks completed with a particular **hirer** are continuous, where—
  - (a) the **agency worker** has started working during an **assignment**, and there is a break, either between **assignments** or during an **assignment**, when the **agency worker** is not working,
  - (b) paragraph (8) applies to that break, and
  - (c) the **agency worker** returns to work in the same role with the same **hirer**,  
any continuous weeks during which the **agency worker** worked for that **hirer** before the break shall be carried forward and treated as continuous with any weeks during which the **agency worker** works for that **hirer** after the break.
- (6) For the purposes of this regulation and regulation 8, when calculating the number of weeks during which the **agency worker** has worked, where the **agency worker** has—
  - (a) started working in a role during an **assignment**, and
  - (b) is unable to continue working for a reason described in paragraph (8)(c) or (8)(d)(i), (ii) or (iii),  
for the period that is covered by one or more such reasons, that **agency worker** shall be deemed to be working in that role with the **hirer**, for the original intended duration, or likely duration of the **assignment**, whichever is the longer.
- (7) Where—
  - (a) an **assignment** ends on grounds which are maternity grounds within the meaning of section 68A of the **1996 Act**, and
  - (b) the **agency worker** is deemed to be working in that role in accordance with paragraph (6),  
the fact that an **agency worker** is actually working in another role, whether for the same or a different **hirer** during the period mentioned in paragraph (6) or any part of that period, does not affect the operation of that paragraph.
- (8) This paragraph applies where there is a break between **assignments**, or during an **assignment**, when the **agency worker** is not working, and the break is—
  - (a) for any reason and the break is not more than six calendar weeks;
  - (b) wholly due to the fact that the **agency worker** is incapable of working in consequence of sickness or injury, and the requirements of paragraph (9) are satisfied;
  - (c) related to pregnancy, childbirth or maternity and is at a time in a protected period;
  - (d) wholly for the purpose of taking time off or leave, whether statutory or contractual, to

which the **agency worker** is otherwise entitled which is—

- (i) ordinary, compulsory or additional maternity leave;
- (ii) ordinary or additional adoption leave;
- (iii) paternity leave;
- (iv) time off or other leave not listed in sub-paragraph (d)(i), (ii) or (iii); or
- (v) for more than one of the reasons listed in sub-paragraph (d)(i) to (iv);

(e) wholly due to the fact that the **agency worker** is required to attend at any place in pursuance of being summoned for service as a juror under the Juries Act 1974<sup>8</sup>, the Coroners Act 1988<sup>9</sup> the Court of Session Act 1988<sup>10</sup> or the Criminal Procedure (Scotland) Act 1995<sup>11</sup>, and the break is 28 calendar weeks or less;

(f) wholly due to a temporary cessation in the **hirer's** requirement for any **worker** to be present at the establishment and work in a particular role, for a pre-determined period of time according to the established custom and practices of the **hirer**; or

(g) wholly due to a strike, lock-out or other industrial action at the **hirer's** establishment; or

(h) wholly due to more than one of the reasons listed in sub-paragraphs (b), (c), (d), (e), (f) or (g).

(9) Paragraph (8)(b) only applies where—

(a) the break is 28 calendar weeks or less;

(b) paragraph (8)(c) does not apply; and

(c) if required to do so by the **temporary work agency**, the **agency worker** has provided such written medical evidence as may reasonably be required.

(10) For the purposes of paragraph (8)(c), a protected period begins at the start of the pregnancy, and the protected period associated with any particular pregnancy ends at the end of the 26 weeks beginning with childbirth or, if earlier, when the **agency worker** returns to work.

(11) For the purposes of paragraph (10) "childbirth" means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy.

(12) Time spent by an **agency worker** working during an **assignment** before 1st October 2011 does not count for the purposes of this regulation.

### **Completion of the qualifying period and continuation of the regulation 5 rights**

**8.** Where an **agency worker** has completed the qualifying period with a particular **hirer**, the rights conferred by regulation 5 shall apply and shall continue to apply to that **agency worker** in relation to that particular **hirer** unless—

(a) that **agency worker** is no longer working in the same role, within the meaning of regulation 7(3), with that **hirer**; or

(b) there is a break between **assignments**, or during an **assignment**, when the **agency worker** is not working, to which regulation 7(8) does not apply.

---

<sup>8</sup> 1974 c.23.

<sup>9</sup> 1988 c.13

<sup>10</sup> 1988 c.36

<sup>11</sup> 1995 c.46.

## 9 Structure of assignments

(1) Notwithstanding paragraphs (1) and (2) of regulation 7, and regulation 8, if paragraphs (3) and (4) apply an **agency worker** shall be treated as having completed the qualifying period from the time at which the **agency worker** would have completed the qualifying period but for the structure of the **assignment** or **assignments** mentioned in paragraph (3).

(2) Notwithstanding paragraphs (1) and (2) of regulation 7, and regulation 8, if paragraphs (3) and (4) apply an **agency worker** who has completed the qualifying period and—

- (a) is no longer entitled to the rights conferred by regulation 5, but
- (b) would be so entitled but for the structure of the **assignment** or **assignments** mentioned in paragraph (3),

shall be treated as continuing to be entitled to those rights from the time at which the **agency worker** completed that period.

(3) This paragraph applies when an **agency worker** has—

- (a) completed two or more **assignments** with a **hirer** (H),
- (b) completed at least one **assignment** with H and one or more earlier **assignments** with **hirers** connected to H, or
- (c) worked in more than two roles during an **assignment** with H, and on at least two occasions has worked in a role that was not the “same role” as the previous role within the meaning of regulation 7(3).

(4) This paragraph applies where—

- (a) the most likely explanation for the structure of the **assignment**, or **assignments**, mentioned in paragraph (3) is that H, or the **temporary work agency** supplying the **agency worker** to H, or, where applicable, H and one or more **hirers** connected to H, intended to prevent the **agency worker** from being entitled to, or from continuing to be entitled to, the rights conferred by regulation 5; and
- (b) the **agency worker** would be entitled to, or would continue to be entitled to, the rights conferred by regulation 5 in relation to H, but for that structure.

(5) The following matters in particular shall be taken into account in determining whether the structure of the **assignment** or **assignments** mentioned in paragraph (3) shows that the most likely explanation for it is that mentioned in paragraph (4)(a)—

- (a) the length of the **assignments**;
- (b) the number of **assignments** with H and, where applicable, **hirers** connected to H;
- (c) the number of times the **agency worker** has worked in a new role with H and, where applicable, **hirers** connected to H, and that new role is not the “same role” within the meaning of regulation 7(3);
- (d) the number of times the **agency worker** has returned to work in the same role within the meaning of regulation 7(3) with H and, where applicable, **hirers** connected to H;
- (e) the period of any break between **assignments** with H and, where applicable, **hirers** connected to H.

(6) For the purposes of this regulation **hirers** are connected to a **hirer** if one **hirer** (directly or indirectly) has control of the other **hirer** or a third person (directly or indirectly) has control of both **hirers**.

**10 Permanent contracts providing for pay between assignments**

(1) To the extent to which it relates to pay, regulation 5 does not have effect in relation to an **agency worker** who has a permanent **contract of employment** with a **temporary work agency** if—

- (a) the **contract of employment** was entered into before the beginning of the first **assignment** under that contract and includes terms and conditions in writing relating to—
  - (i) the minimum scale or rate of remuneration or the method of calculating remuneration,
  - (ii) the location or locations where the **agency worker** may be expected to work,
  - (iii) the expected hours of work during any **assignment**,
  - (iv) the maximum number of hours of work that the **agency worker** may be required to work each week during any **assignment**,
  - (v) the minimum hours of work per week that may be offered to the **agency worker** during any **assignment** provided that it is a minimum of at least one hour, and
  - (vi) the nature of the work that the **agency worker** may expect to be offered including any relevant requirements relating to qualifications or experience;
- (b) the **contract of employment** contains a statement that the effect of entering into it is that the **employee** does not, during the currency of the contract, have any entitlement to the rights conferred by regulation 5 insofar as they relate to pay;
- (c) during any period under the contract after the end of the first assignment under that contract in which the **agency worker** is not working temporarily for and under the supervision and direction of a **hirer** but is available to do so—
  - (i) the **temporary work agency** takes reasonable steps to seek suitable work for the **agency worker**,
  - (ii) if suitable work is available, the **temporary work agency** offers the **agency worker** to be proposed to a **hirer** who is offering such work, and
  - (iii) the **temporary work agency** pays the **agency worker** a minimum amount of remuneration in respect of that period (“the minimum amount”); and
- (d) the **temporary work agency** does not terminate the **contract of employment** until it has complied with its obligations in sub-paragraph (c) for an aggregate of not less than four calendar weeks during the contract.

(2) For work to be suitable for the purposes of paragraph (1)(c) the nature of the work, and the terms and conditions applicable to the **agency worker** whilst performing the work, must not differ from the nature of the work and the terms and conditions included in the **contract of employment** under paragraph (1)(a).

## 11 Calculating the minimum amount of pay

(1) Subject to paragraph (3), the minimum amount to be paid to the **agency worker** during a pay reference period falling within a period to which regulation 10(1)(c) applies shall not be less than 50% of the pay paid to the **agency worker** in the relevant pay reference period.

(2) For the purposes of paragraph (1), the relevant pay reference period shall be the pay reference period in which the **agency worker** received the highest level of pay which fell—

(a) within the 12 weeks immediately preceding the end of the previous **assignment**, where the **assignment** lasted for longer than 12 weeks, or

(b) during the **assignment**, where the **assignment** lasted for 12 or fewer weeks.

(3) The minimum amount shall be not less than the amount that the **agency worker** would have been entitled to for the hours worked in the relevant pay reference period if the provisions of the National Minimum Wage Regulations 1999 applied<sup>12</sup>.

(4) For the purposes of calculating the minimum amount as set out in paragraph (1), only payments in respect of basic pay whether by way of annual salary, payments for actual time worked or by reference to output or otherwise shall be taken into account.

(5) For the purposes of this regulation, “pay reference period” is a month or, in the case of a **worker** who is paid wages by reference to a period shorter than a month, that period.

---

<sup>12</sup> S.I. 1999/584; relevant amending instruments are S.I. 2000/1989, S.I. 2001/2673, S.I. 2002/1999, S.I. 2003/1923, S.I. 2004/1930, S.I. 2005/2019, S.I. 2006/2001, S.I. 2007/2318, S.I. 2008/1894, S.I. 2009/1902.

## 12 Rights of agency workers in relation to access to collective facilities and amenities

- (1) An **agency worker** has during an **assignment** the right to be treated no less favourably than a comparable **worker** in relation to the collective facilities and amenities provided by the **hirer**.
- (2) The rights conferred by paragraph (1) apply only if the less favourable treatment is not justified on objective grounds.
- (3) “Collective facilities and amenities” includes, in particular—
  - (a) canteen or other similar facilities;
  - (b) child care facilities; and
  - (c) transport services.
- (4) For the purposes of paragraph (1) an individual is a comparable **worker** in relation to an **agency worker** if at the time when the breach of paragraph (1) is alleged to take place—
  - (a) both that individual and the **agency worker** are—
    - (i) working for and under the supervision and direction of the **hirer**, and
    - (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills;
  - (b) that individual works or is based at the same establishment as the **agency worker** or, where there is no comparable **worker** working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements; and
  - (c) that individual is an **employee** of the **hirer** or, where there is no **employee** satisfying the requirements of sub-paragraphs (a) and (b), is a **worker** of the **hirer** and satisfies those requirements.

## 13 Rights of agency workers in relation to access to employment

- (1) An **agency worker** has during an **assignment** the right to be informed by the **hirer** of any relevant vacant posts with the **hirer**, to give that **agency worker** the same opportunity as a comparable **worker** to find permanent **employment** with the **hirer**.
- (2) For the purposes of paragraph (1) an individual is a comparable **worker** in relation to an **agency worker** if at the time when the breach of paragraph (1) is alleged to take place—
  - (a) both that individual and the **agency worker** are—
    - (i) working for and under the supervision and direction of the **hirer**, and
    - (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills;
  - (b) that individual works or is based at the same establishment as the **agency worker**; and
  - (c) that individual is an **employee** of the **hirer** or, where there is no **employee** satisfying the requirements of sub-paragraphs (a) and (b), is a **worker** of the **hirer** and satisfies those requirements.
- (3) For the purposes of paragraph (1), an individual is not a comparable **worker** if that individual’s **employment** with the **hirer** has ceased.
- (4) For the purposes of paragraph (1) the **hirer** may inform the **agency worker** by a general announcement in a suitable place in the **hirer**’s establishment.

## PART 3 Liability, Protections and Remedies

### 14 Liability of temporary work agency and hirer

(1) ~~Subject to paragraph (3),~~ A **temporary work agency** shall be liable for any breach of regulation 5, to the extent that it is responsible for that breach.

(2) ~~Subject to paragraph (3),~~ the **hirer** shall be liable for any breach of regulation 5, to the extent that it is responsible for that breach.

(3) A **temporary work agency** shall not be liable for a breach of regulation 5 where it is established that the **temporary work agency**—

(a) obtained, or has taken reasonable steps to obtain, relevant information from the **hirer**

(i) about the basic working and **employment** conditions in force in the **hirer**;

(ii) if needed to assess compliance with regulation 5, about the relevant terms and conditions under which an employee of the hirer is working where—

(aa) that employee is considered to be a comparable employee in relation to that agency worker for the purposes of regulation 5(4), and

(bb) those terms and conditions are ordinarily included in the contract of such a comparable employee;

and

(iii) which explains the basis on which it is considered that the employee referred to in sub-paragraph (ii)(aa) is a comparable employee;"; and

(b) where it has received such information, has acted reasonably in determining what the **agency worker's** basic working and **employment** conditions should be at the end of the qualifying period and during the period after that until, in accordance with regulation 8, the **agency worker** ceases to be entitled to the rights conferred by regulation 5; and

(c) ensured that where it has responsibility for applying those basic working and **employment** conditions to the **agency worker**, that **agency worker** has been treated in accordance with the determination described in sub-paragraph (b),

and to the extent that the **temporary work agency** is not liable under this provision, the **hirer** shall be liable.

~~(4) Where the **temporary work agency** or **hirer** seeks to rely on regulation 5(3), relevant information in paragraph (3)(a) includes information that—~~

~~(a) explains the basis on which it is considered that an individual is a comparable **employee**;~~  
~~and~~

~~(b) —describes the relevant terms and conditions which apply to that **employee**.~~

(5) Where more than one **temporary work agency** is a party to the proceedings, when deciding whether or not each **temporary work agency** is responsible in full or in part, the **employment** tribunal shall have regard to the extent to which each agency was responsible for the determination, or application, of any of the **agency worker's** basic working and **employment** conditions.

(6) The **hirer** shall be liable for any breach of regulation 12 or 13.

(7) In relation to the rights conferred by regulation 17—

(a) a **temporary work agency** shall be liable for any act, or any deliberate failure to act, of that **temporary work agency**; and

(b) the **hirer** shall be liable for any act, or any deliberate failure to act, of the **hirer**.

### Restrictions on contracting out

15. Section 203<sup>13</sup> of the **1996 Act** (restrictions on contracting out) shall apply in relation to these Regulations as if they were contained in that Act.

<sup>13</sup> Section 203 was amended by the **Employment** Rights (Dispute Resolution) Act 1998 (c.8) and by the **Employment** Relations Act 1999 (c.26), section 44 and Schedule 9.

## 16 Right to receive information

(1) An **agency worker** who considers that the **hirer** or a **temporary work agency** may have treated that **agency worker** in a manner which infringes a right conferred by regulation 5, may make a written request to the **temporary work agency** for a written statement containing information relating to the treatment in question.

(2) A **temporary work agency** that receives such a request from an **agency worker** shall, within 28 days of receiving it, provide the **agency worker** with a written statement setting out—

(a) relevant information relating to the basic working and **employment** conditions of the **workers** of the **hirer**,

(b) the factors the **temporary work agency** considered when determining the basic working and **employment** conditions which applied to the **agency worker** at the time when the breach of regulation 5 is alleged to have taken place, and

(c) where the **temporary work agency** seeks to rely on regulation 5(3), relevant information which—

(i) explains the basis on which it is considered that an individual is a comparable **employee**, and

(ii) describes the relevant terms and conditions, which apply to that **employee**.

(3) If an **agency worker** has made a request under paragraph (1) and has not been provided with such a statement within 30 days of making that request, the **agency worker** may make a written request to the **hirer** for a written statement containing information relating to the relevant basic working and **employment** conditions of the **workers** of the **hirer**.

(4) A **hirer** that receives a request made in accordance with paragraph (3) shall, within 28 days of receiving it, provide the **agency worker** with such a statement.

(5) An **agency worker** who considers that the **hirer** may have treated that **agency worker** in a manner which infringes a right conferred by regulation 12 or 13, may make a written request to the **hirer** for a written statement containing information relating to the treatment in question.

(6) A **hirer** that receives such a request from an **agency worker** shall, within 28 days of receiving it, provide the **agency worker** with a written statement setting out—

(a) all relevant information relating to the rights of a comparable **worker** in relation to the rights mentioned in regulation 12 or, as the case may be, regulation 13, and

(b) the particulars of the reasons for the treatment of the **agency worker** in respect of the right conferred by regulation 12 or, as the case may be, regulation 13.

(7) Paragraphs (1) and (3) apply only to an **agency worker** who at the time that **worker** makes such a request is entitled to the right conferred by regulation 5.

(8) Information provided under this regulation, whether in the form of a written statement or otherwise, is admissible as evidence in any proceedings under these Regulations.

(9) If it appears to the tribunal in any proceedings under these Regulations—

(a) that a **temporary work agency** or the **hirer** (as the case may be) deliberately, and without reasonable excuse, failed to provide information, whether in the form of a written statement or otherwise, or

(b) that any written statement supplied is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that that **temporary work agency** or **hirer** (as the case may be) has infringed the right in question.

**17 Unfair dismissal and the right not to be subjected to detriment**

(1) An **agency worker** who is an **employee** and is dismissed shall be regarded as unfairly dismissed for the purposes of Part 10 of the **1996 Act** if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) An **agency worker** has the right not to be subjected to any detriment by, or as a result of, any act, or any deliberate failure to act, of a **temporary work agency** or the **hirer**, done on a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are—

(a) that the **agency worker**—

(i) brought proceedings under these Regulations;

(ii) gave evidence or information in connection with such proceedings brought by any **agency worker**;

(iii) made a request under regulation 16 for a written statement;

(iv) otherwise did anything under these Regulations in relation to a **temporary work agency, hirer**, or any other person;

(v) alleged that a **temporary work agency** or **hirer** has breached these Regulations;

(vi) refused(or proposed to refuse) to forgo a right conferred by these Regulations; or

(b) that the **hirer** or a **temporary work agency** believes or suspects that the **agency worker** has done or intends to do any of the things mentioned in sub-paragraph (a).

(4) Where the reason or principal reason for subjection to any act or deliberate failure to act is that mentioned in paragraph (3)(a)(v), or paragraph 3(b) so far as it relates to paragraph (3)(a)(v), neither paragraph (1) nor paragraph (2) applies if the allegation made by the **agency worker** is false and not made in good faith.

(5) Paragraph (2) does not apply where the detriment in question amounts to a dismissal of an **employee** within the meaning of Part 10 of the **1996 Act**.

## 18 Complaints to employment tribunals etc

- (1) In this regulation “respondent” includes the **hirer** and any **temporary work agency**.
- (2) Subject to regulation 17(5), an **agency worker** may present a complaint to an **employment tribunal** that a **temporary work agency** or the **hirer** has infringed a right conferred on the **agency worker** by regulation 5, 12, 13 or 17 (2).
- (3) An **agency worker** may present a complaint to an **employment tribunal** that a **temporary work agency** has—
- (a) breached a term of the **contract of employment** described in regulation 10(1)(a); or
  - (b) breached a duty under regulation 10(1)(b), (c) or (d).
- (4) Subject to paragraph (5), an **employment tribunal** shall not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning—
- (a) in the case of an alleged infringement of a right conferred by regulation 5, 12 or 17(2) or a breach of a term of the contract described in regulation 10(1)(a) or of a duty under regulation 10(1)(b), (c) or (d), with the date of the infringement, detriment or breach to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the infringement, detriment or breach, the last of them;
  - (b) in the case of an alleged infringement of the right conferred by regulation 13, with the date, or if more than one the last date, on which other individuals, whether or not **employed** by the **hirer**, were informed of the vacancy.
- (5) A tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (6) For the purposes of calculating the date of the infringement, detriment or breach, under paragraph (4)(a)—
- (a) where a term in a contract infringes a right conferred by regulation 5, 12 or 17(2), or breaches regulation 10(1), that infringement or breach shall be treated, subject to subparagraph (b), as taking place on each day of the period during which the term infringes that right or breaches that duty;
  - (b) a deliberate failure to act that is contrary to regulation 5, 12 or 17(2) or 10(1) shall be treated as done when it was decided on.
- (7) In the absence of evidence establishing the contrary, a person (P) shall be taken for the purposes of paragraph (6)(b) to decide not to act—
- (a) when P does an act inconsistent with doing the failed act; or
  - (b) if P has done no such inconsistent act, when the period expires within which P might reasonably have been expected to have done the failed act if it was to be done.
- (8) Where an **employment tribunal** finds that a complaint presented to it under this regulation is well founded, it shall take such of the following steps as it considers just and equitable—
- (a) making a declaration as to the rights of the complainant in relation to the matters to which the complaint relates;
  - (b) ordering the respondent to pay compensation to the complainant;
  - (c) recommending that the respondent take, within a specified period, action appearing to the tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.
- (9) Where a tribunal orders compensation under paragraph (8)(b), and there is more than one respondent, the amount of compensation payable by each or any respondent shall be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent’s responsibility for the infringement to which the complaint relates.
- (10) Subject to paragraphs (12) and (13), where a tribunal orders compensation under paragraph (8)(b), the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement or breach to which the complaint relates; and
- (b) any loss which is attributable to the infringement.

(11) The loss shall be taken to include—

- (a) any expenses reasonably incurred by the complainant in consequence of the infringement or breach; and
- (b) loss of any benefit which the complainant might reasonably be expected to have had but for the infringement or breach.

(12) Subject to paragraph (13), where a tribunal orders compensation under paragraph (8)(b), any compensation which relates to an infringement or breach of the rights—

- (a) conferred by regulation 5 or 10; or
- (b) conferred by regulation 17(2) to the extent that the infringement or breach relates to regulation 5 or 10,

shall not be less than two weeks' pay, calculated in accordance with regulation 19.

(13) Paragraph (12) does not apply where the tribunal considers that in all the circumstances of the case, taking into account the conduct of the claimant and respondent, two weeks' pay is not a just and equitable amount of compensation, and the amount shall be reduced as the tribunal consider appropriate.

(14) Where a tribunal finds that regulation 9(4) applies and orders compensation under paragraph (8)(b), the tribunal may make an additional award of compensation under paragraph 8(b), which shall not be more than £5,000, and where there is more than one respondent the proportion of any additional compensation awarded that is payable by each of them shall be such as the tribunal considers just and equitable having regard to the extent to which it considers each to have been responsible for the fact that regulation 9(4)(a) applies.

(15) Compensation in respect of treating an **agency worker** in a manner which infringes the right conferred by regulation 5, 12 or 13 or breaches regulation 10(1)(b), (c) or (d), or breaches a term of the contract described in regulation 10(1)(a), shall not include compensation for injury to feelings.

(16) In ascertaining the loss the tribunal shall apply the same rule concerning the duty of a person to mitigate loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) the law of Scotland.

(17) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(18) If a **temporary work agency** or the **hirer** fails, without reasonable justification, to comply with a recommendation made by an **employment** tribunal under paragraph (8)(c) the tribunal may, if it thinks it just and equitable to do so—

- (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under paragraph (8)(b); or
- (b) make an order under paragraph (8)(b).

## 19 Calculating a week's pay

(1) For the purposes of regulation 18(12)—

(a) a week's pay shall be the higher of—

(i) the average weekly pay received by the **agency worker**, in relation to the **assignment** to which the claim relates, in the relevant period; and

(ii) the average weekly pay the **agency worker** should have been receiving by virtue of regulation 5, in relation to the **assignment** to which the claim relates, in the relevant period; and

(b) for the purposes of this paragraph, only payments in respect of basic pay whether by way of annual salary, payments for actual time worked or by reference to output or otherwise shall be taken into account.

(2) The relevant period is —

(a) where the **assignment** has ended on or before the date the complaint was presented to the tribunal under regulation 18(2), the four week period (or in a case where the **assignment** was shorter than four weeks, that period) ending with the last day of the **assignment** to which the claim relates; or

(b) where the **assignment** has not so ended the four week period (or in the case where that **assignment** was shorter than four weeks, that period) ending with the date of the complaint.

## 20 Liability of employers and principals

(1) Anything done by a person in the course of **employment** shall be treated for the purposes of these Regulations as also done by their **employer**, whether or not it was done with that **employer's** knowledge or approval.

(2) Anything done by a person as agent for the **employer** with the authority of the **employer** shall be treated for the purposes of these Regulations as also done by the **employer**.

(3) In proceedings under these Regulations against any person in respect of an act alleged to have been done by an **employee** of that person, it shall be a defence for that person to prove that he or she took such steps as were reasonably practicable to prevent the **employee** from—

(a) doing that act; or

(b) doing, in the course of his or her **employment**, acts of that description.

## PART 4 Special Classes of Person

### 21 Crown employment and service as a member of the armed forces

(1) These Regulations have effect in relation to—

- (a) Crown **employment**,
- (b) service as a member of the armed forces of the Crown,
- (c) persons in Crown **employment**, and
- (d) persons in service as a member of the armed forces of the Crown,

as they have effect in relation to other **employment** and other **employees**.

(2) In paragraph (1) “Crown **employment**” means **employment** under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision but subject to paragraph (4).

(3) For the purposes of the application of the provisions of these Regulations in relation to Crown **employment** and service as a member of the armed forces of the Crown in accordance with paragraph (1)—

- (a) references to an **employee** shall be construed as references to a person in Crown **employment** or in service as a member of the armed forces of the Crown to whom the definition of **employee** is appropriate; and
- (b) references to a contract in relation to an **employee** shall be construed as references to the terms of **employment** of a person in Crown **employment** or in service as a member of the armed forces of the Crown to whom the definition of **employee** is appropriate.

(4) Crown **employment**—

- (a) does not include service as a member of the armed forces of the Crown, but
- (b) does include **employment** by an association established for the purposes of Part 11 of the Reserve Forces Act 1996<sup>14</sup>.

### 22 House of Lords staff

(1) These Regulations have effect in relation to **employment** as a relevant member of the House of Lords staff as they have effect in relation to other **employment**.

(2) In this regulation “relevant member of the House of Lords staff” means any person who is **employed** under a contract with the Corporate Officer of the House of Lords by virtue of which he is a **worker**.

### 23 House of Commons staff

(1) These Regulations have effect in relation to **employment** as a relevant member of the House of Commons staff as they have effect in relation to other **employment**.

(2) In this regulation “relevant member of the House of Commons staff” means any person—

- (a) who was appointed by the House of Commons Commission; or
- (b) who is a member of the Speaker’s personal staff.

---

<sup>14</sup> 1996 c.14.

**24 Police service**

(1) For the purposes of these Regulations, the holding, otherwise than under a **contract of employment**, of the office of constable or an appointment as a police cadet shall be treated as **employment**, under a **contract of employment**, by the relevant officer.

(2) For the purposes of these Regulations, any constable or other person who has been seconded to SOCA to serve as a member of its staff shall be treated as **employed** by SOCA, in respect of actions taken by, or on behalf of, SOCA.

(3) For the purposes of regulation 20—

(a) the secondment of any constable or other person to SOCA to serve as a member of its staff shall be treated as **employment** by SOCA (and not as being **employment** by any other person); and

(b) anything done by a person so seconded in the performance, or purported performance, of his functions shall be treated as done in the course of that **employment**.

(4) In this regulation “the relevant officer” means—

(a) in relation to a member of the police force or a special constable or police cadet appointed for a police area, the chief officer of police (or, in Scotland, the chief constable); and

(b) in relation to any other person holding the office of constable or an appointment as a police cadet, the person who has the direction and control of the body of constables or cadets in question.

(5) In this regulation “SOCA” means the Serious Organised Crime Agency.

## **PART 5 Amendments to legislation**

### **Amendments to legislation**

**25.** Schedule 2 which contains amendments to legislation shall have effect.

20th January 2010

*Pat McFadden*

Minister of State for Business, Innovation and Skills Department for Business, Innovation and Skills

**SCHEDULE 1      Regulation 1**

**PROVISIONS EXTENDING TO ENGLAND AND WALES, SCOTLAND AND NORTHERN IRELAND**

1. The following provisions of Schedule 2 to these Regulations extend to England and Wales, Scotland and Northern Ireland.
2. Paragraphs 28 and 29, relating to the Transfer of Undertakings (Protection of **Employment**) Regulations 2006<sup>15</sup>.
3. Paragraphs 30 to 38, relating to the European Cooperative Society (Involvement of **Employees**) Regulations 2006<sup>16</sup>.
4. Paragraphs 39 to 46, relating to the Companies (Cross-Border Mergers) Regulations 2007<sup>17</sup>.

---

<sup>15</sup> (a) S.I. 2006/246.

<sup>16</sup> (b) S.I. 2006/2059.

<sup>17</sup> (c) S.I. 2007/2974.

## SCHEDULE 2 Regulation 25 CONSEQUENTIAL AMENDMENTS

### PART 1 PRIMARY LEGISLATION

#### The Trade Union and Labour Relations (Consolidation) Act 1992

1. The Trade Union and Labour Relations (Consolidation) Act 1992<sup>18</sup> is amended as follows.
2. In section 70B (collective bargaining: training)— (a) after subsection (4) insert—

“(4A) If the information mentioned in subsection (4) includes information relating to the **employment** situation the **employer** must (so far as not required by subsection (4)) also provide at the same time to the trade union the following information—

(b)

(a) the number of **agency workers** working temporarily for and under the supervision and direction of the **employer**,

(b) the parts of the **employer’s** undertaking in which those **agency workers** are working, and

(c) the type of work those **agency workers** are carrying out.”, and in subsection (5) after “(4)” insert “or (4A)”.
3. In section 181(2) (general duty of **employers** to disclose information relating to their undertaking) after “undertaking” insert “(including information relating to use of **agency workers** in that undertaking)”.
- 4.—(1) Section 188(4), (disclosure for the purposes of consultation) is amended as follows.
  - (2) Omit “and” at the end of paragraph (e).
  - (3) After paragraph (f) add—

“(g) the number of **agency workers** working temporarily for and under the supervision and direction of the **employer**,

(h) the parts of the **employer’s** undertaking in which those **agency workers** are working, and

(i) the type of work those **agency workers** are carrying out.”.
5. In section 298 (minor definitions: general), after the entry relating to “act” and “action” insert—

““**agency worker**” has the meaning given in regulation 3 of the **Agency workers Regulations 2010**.”.
6. In section 299 (index of defined expressions), insert in the appropriate place—

“ **agency worker** section 298 ”
- 7.—(1) Schedule A1 is amended as follows.
  - (2) In paragraph 7, after sub-paragraph (5), insert—

“(5A) Sub-paragraph (5B) applies to an **agency worker** whose contract within regulation 3(1)(b) of the **Agency workers Regulations 2010** (contract with the **temporary work agency**) is not a **contract of employment**.

(5B) For the purposes of sub-paragraphs (1) and (2), the **agency worker** is to be treated as having a **contract of employment** with the **temporary work agency** for the

---

<sup>18</sup> (d) 1992 c.52; section 70B was inserted by the **Employment Relations Act 1999** (c.26), section 5; section 188 (4) was amended by regulations 3(1) and (3) of S.I. 1995/2587 and the **Trade Union Reform and Employment Rights Act 1993** (c.19), sections 34 (1), (2)(a), 51 and Schedule 10; section 298 was amended by the **Employment Relations Act 2004** (c.24), section 50 (4), the **Employment Rights Act 1996** (c.18 ), section 240 and paragraphs 56 (1) and (19) of Schedule 1 and Article 3.(2) and Schedule 2 of S.I. 2001/1149; section 299 was amended by regs 2 (1), (2) and 7 of S.I. 1999/1925, the **Trade Union Reform and Employment Rights Act 1993** (c.19 ), section 49 (2) and paragraph 89 of Schedule 8, reg 7 of S.I. 1995/2587, the **Employment Relations Act 2004** (c. ), section 57, paragraph 22 of Schedule 1 and Schedule 2 and Article 3 (2) and Schedule 2 to S.I. 2001/1149; Schedule A1 was inserted by the **Employment Relations Act 1999** (c. 26), sections 1 (1), (3) and Schedule 1. There are amendments to Schedule A1 but none are relevant to these Regulations.

duration of the **assignment** with the **employer** (and “**assignment**” has the same meaning as in those Regulations).”.

(3) In paragraph 99, after sub-paragraph (5), insert—

“(5A) Sub-paragraph (5B) applies to an **agency worker** whose contract within regulation 3(1)(b) of the **Agency workers Regulations 2010** (contract with the **temporary work agency**) is not a **contract of employment**..

(5B) For the purposes of sub-paragraphs (1) and (4), the **agency worker** is to be treated as having a **contract of employment** with the **temporary work agency** for the duration of the **assignment** with the **employer** (and “**assignment**” has the same meaning as in those Regulations).”.

### The Employment Tribunals Act 1996

8. The **Employment Tribunals Act 1996**<sup>19</sup> is amended as follows—

(a) In section 18(1)<sup>20</sup> (cases where conciliation provisions apply)—

(i) at the end of the paragraph inserted by regulation 33 of the European Public Limited-Liability Company (**Employee Involvement**) (Great Britain) Regulations 2009<sup>21</sup>, omit “or”, and

(ii) after paragraph (w), insert— “, or

(x) arising out of a contravention, or alleged contravention of regulation 5, 12, 13 or 17(2) of the **Agency workers Regulations 2010**.”;

(b) In section 21<sup>22</sup> (jurisdiction of the **Employment Appeal Tribunal**) in subsection (1) (which specifies the proceedings and claims to which the section applies)—

(i) at the end of paragraph (w), omit “or”, and

(ii) after paragraph (x), insert—

“, or (y) the **Agency workers Regulations 2010**.”.

### The Employment Rights Act 1996

9. The **1996 Act** is amended as follows.

10. In section 27(1)<sup>23</sup> (protection of wages; sums included in “wages”), after paragraph (f) insert—

“(fa) remuneration on ending the supply of an **agency worker** on maternity grounds under section 68C of this Act.”

11. After section 57 insert—

“*Ante-natal care: agency workers*

#### 57ZA Right to time off for ante-natal care (agency workers)

(1) An **agency worker** who—

(a) is pregnant, and

(b) has, on the advice of a registered medical practitioner, registered midwife or registered nurse, made an appointment to attend at any place for the purpose of receiving ante-natal care,

is entitled to be permitted, by the **temporary work agency** and the **hirer**, to take time off

<sup>19</sup> (a) 1996 c.17. Under section 1(1) of the **Employment Rights (Dispute Resolution) Act 1998** (c.8), the Act, formerly the **Industrial Tribunals Act 1996**, may now be cited as the **Employment Tribunals Act 1996**.

<sup>20</sup> (b) Section 18(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

<sup>21</sup> (c) S.I. 2009/2401.

<sup>22</sup> Section 21 has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

<sup>23</sup> There are amendments to this section none of which are relevant.

during the **agency worker's** working hours in order to enable her to keep the appointment.

(2) An **agency worker** is not entitled to be permitted by either of those persons to take time off under this section to keep an appointment unless, if that person requests her to do so, she produces for that person's inspection—

- (a) a certificate from a registered medical practitioner, registered midwife or registered nurse stating that the **agency worker** is pregnant, and
- (b) an appointment card or some other document showing that the appointment has been made.

(3) Subsection (2) does not apply where the **agency worker's** appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).

(4) For the purposes of this section the working hours of an **agency worker** shall be taken to be any time when, in accordance with the terms under which the **agency worker** works temporarily for and under the supervision and direction of the **hirer**, the **agency worker** is required to be at work.

(5) In this section references to a registered nurse have the same meaning as in section 55.

#### **57ZB Right to remuneration for time off under section 57ZA**

(1) An **agency worker** who is permitted to take time off under section 57ZA is entitled to be paid remuneration by the **temporary work agency** for the period of absence at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an **agency worker**, is the amount of one week's pay divided by the number of normal working hours in a week for that **agency worker** in accordance with the terms under which the **agency worker** works temporarily for and under the supervision and direction of the **hirer** that are in force on the day when the time off is taken.

(3) But where the number of normal working hours during the **assignment** differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the **agency worker's** normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken.

(4) A right to any amount under subsection (1) does not affect any right of an **agency worker** in relation to remuneration under her contract with the **temporary work agency** ("contractual remuneration").

(5) Any contractual remuneration paid to an **agency worker** in respect of a period of time off under section 57ZA goes towards discharging any liability of the **temporary work agency** to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the **temporary work agency** to pay contractual remuneration in respect of that period.

#### **57ZC Complaint to employment tribunal: agency workers**

(1) An **agency worker** may present a complaint to an **employment tribunal** that the **temporary work agency**—

- (a) has unreasonably refused to permit her to take time off as required by section 57ZA, or
- (b) has failed to pay the whole or any part of any amount to which she is entitled under section 57ZB.

(2) An **agency worker** may present a complaint to an **employment tribunal** that the **hirer**

has unreasonably refused to permit her to take time off as required by section 57ZA.

(3) An **employment** tribunal shall not consider a complaint under subsection (1) or (2) unless it is presented—

(a) before the end of the period of three months beginning with the date of the appointment concerned, 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.

(4) Where an **employment** tribunal finds a complaint under this section well-founded, the tribunal shall make a declaration to that effect.

(5) If the complaint is that the **temporary work agency** or **hirer** has unreasonably refused to permit the **agency worker** to take time off, the tribunal shall also order payment to the **agency worker** of an amount equal to the remuneration to which she would have been entitled under section 57ZB if she had not been refused the time off.

(6) Where the tribunal orders payment under subsection (5), the amount payable by each party shall be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

(7) If the complaint is that the **temporary work agency** has failed to pay the **agency worker** the whole or part of any amount to which she is entitled under section 57ZB, the tribunal shall also order the **temporary work agency** to pay to the **agency worker** the amount which it finds due to her.

#### **57ZD Agency workers: supplementary**

(1) Without prejudice to any other duties of the **hirer** or **temporary work agency** under any enactment or rule of law sections 57ZA to 57ZC do not apply where the **agency worker**—

(a) has not completed the qualifying period, or

(b) is no longer entitled to the rights conferred by regulation 5 of the **Agency workers Regulations 2010** pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in those sections imposes a duty on the **hirer** or **temporary work agency** beyond the original intended duration, or likely duration of the **assignment**, whichever is the longer.

(3) Those sections do not apply where sections 55 to 57 apply.

(4) In this section and sections 57ZA to 57ZC the following have the same meaning as in the **Agency workers Regulations 2010**—

“**agency worker**”; “**assignment**”; “**hirer**”; “qualifying period”; “**temporary work agency**”.

#### **12. After section 68 insert—**

*“Ending the supply of an **agency worker** on maternity grounds*

##### **68A Meaning of ending the supply of an agency worker on maternity grounds**

(1) For the purposes of this Part the supply of an **agency worker** to a **hirer** is ended on maternity grounds if, in consequence of action taken pursuant to a provision listed in subsection (2), the supply of the **agency worker** to the **hirer** is ended on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

(2) The provisions are—

(a) regulations 8(3) or 9(2) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997;

(b) regulation 16A(2) or 17A of the Management of Health and Safety at Work Regulations 1999; or

(c) regulation 20 of the Conduct of **Employment** Agencies and **Employment** Businesses Regulations 2003.

#### **68B Right to offer of alternative work**

(1) Where the supply of an **agency worker** to a **hirer** is ended on maternity grounds and the **temporary work agency** has available suitable alternative work, the **agency worker** has a right to be offered to be proposed for such alternative work.

(2) For alternative work to be suitable for an **agency worker** for the purposes of this section—

(a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances, and

(b) the terms and conditions applicable to her whilst performing the work, if they differ from the corresponding terms and conditions which would have applied to her but for the fact that the supply of the **agency worker** to the **hirer** was ended on maternity grounds, must not be substantially less favourable to her than those corresponding terms and conditions.

(3) Subsection (1) does not apply—

(a) where the **agency worker** has confirmed in writing that she no longer requires the work-finding services of the **temporary work agency**, or

(b) beyond the original intended duration, or likely duration, whichever is the longer, of the **assignment** which ended when the supply of the **agency worker** to the **hirer** was ended on maternity grounds.

#### **68C Right to remuneration**

(1) Where the supply of an **agency worker** to a **hirer** is ended on maternity grounds, that **agency worker** is entitled to be paid remuneration by the **temporary work agency**.

(2) An **agency worker** is not entitled to remuneration under this section in respect of any period if—

(a) the **temporary work agency** has—

(i) offered to propose the **agency worker** to a **hirer** that has alternative work available which is suitable alternative work for her for the purposes of section 68B, or

(ii) proposed the **agency worker** to a **hirer** that has such suitable alternative work available, and that **hirer** has agreed to the supply of that **agency worker**, and

(b) the **agency worker** has unreasonably refused that offer or to perform that work.

(3) Nothing in this section imposes a duty on the **temporary work agency** to pay remuneration beyond the original intended duration, or likely duration, whichever is the longer, of the **assignment** which ended when the supply of the **agency worker** to the **hirer** was ended on maternity grounds.

#### **68D Agency workers: supplementary**

(1) Without prejudice to any other duties of the **hirer** or **temporary work agency** under any enactment or rule of law sections 68A, 68B and 68C do not apply where the **agency worker**—

(a) has not completed the qualifying period, or

(b) is no longer entitled to the rights conferred by regulation 5 of the **Agency workers** Regulations 2010 pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in those sections imposes a duty on the **hirer** or **temporary work agency** beyond the original intended duration, or likely duration of the **assignment**, whichever is the longer.

(3) Those sections do not apply where sections 66 to 68 apply.

(4) In this section and sections 68A to 68C the following have the same meaning as in the

**Agency workers Regulations 2010—**

**“agency worker”**; **“assignment”**; **“hirer”**; **“qualifying period”**; **“temporary work agency”**.”.

**13. After section 69 insert—**

**“69A Calculation of remuneration (agency workers)**

(1) The amount of remuneration payable by a **temporary work agency** to an **agency worker** under section 68C is a week’s pay in respect of each week for which remuneration is payable in accordance with section 68C; and if in any week remuneration is payable in respect of only part of that week the amount of a week’s pay shall be reduced proportionately.

(2) A right to remuneration under section 68C does not affect any right of the **agency worker** in relation to remuneration under the contract with the **temporary work agency** (“contractual remuneration”).

(3) Any contractual remuneration paid by the **temporary work agency** to an **agency worker** in respect of any period goes towards discharging the **temporary work agency’s** liability under section 68C in respect of that period; and, conversely, any payment of remuneration in discharge of a **temporary work agency’s** liability under section 68C in respect of any period goes towards discharging any obligation of the **temporary work agency** to pay contractual remuneration in respect of that period.

(4) For the purposes of subsection (1), a week’s pay is the weekly amount that would have been payable to the **agency worker** for performing the work, according to the terms of the contract with the **temporary work agency**, but for the fact that the supply of the **agency worker** to the **hirer** was ended on maternity grounds.

(5) Expressions used in this section and sections 68A to 68C have the same meaning as in those sections (see section 68D).”.

**14. After section 70 insert—**

**“70A Complaints to employment tribunals: agency workers**

(1) An **agency worker** may present a complaint to an **employment** tribunal that the **temporary work agency** has failed to pay the whole or any part of remuneration to which the **agency worker** is entitled under section 68C.

(2) An **employment** tribunal shall not consider a complaint under subsection (1) relating to remuneration in respect of any day unless it is presented—

(a) before the end of the period of three months beginning with the day on which the supply of the **agency worker** to a **hirer** was ended on maternity grounds, 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 within that period of three months.

(3) Where an **employment** tribunal finds a complaint under subsection (1) well-founded, the tribunal shall order the **temporary work agency** to pay the **agency worker** the amount of remuneration which it finds is due to her.

(4) An **agency worker** may present a complaint to an **employment** tribunal that in contravention of section 68B the **temporary work agency** has failed to offer to propose the **agency worker** to a **hirer** that has suitable alternative work available.

(5) An **employment** tribunal shall not consider a complaint under subsection (4) unless it is presented—

(a) before the end of the period of three months beginning with the day on which the supply of the **agency worker** to a **hirer** was ended on maternity grounds, 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 within that period of three months.

(6) Where an **employment** tribunal finds a complaint under subsection (4) well-founded, the

tribunal shall order the **temporary work agency** to pay the **agency worker** the amount of compensation which it finds is due to her.

(7) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the infringement of the **agency worker's** right under section 68B by the failure on the part of the **temporary work agency** to which the complaint relates, and
- (b) any loss sustained by the **agency worker** which is attributable to that failure.

(8) Expressions used in this section and sections 68A to 68C have the same meaning as in those sections (see section 68D).”.

**15.** In section 105<sup>24</sup> (redundancy as unfair dismissal) in subsection (1)(c) (which requires one of a specified group of subsections to apply for a person to be treated as unfairly dismissed) for “(7M)” substitute “(7N)” and after subsection 7M insert—

“(7N) This subsection applies if the reason (or, if more than one, the principal reason) for which the **employee** was selected for dismissal was one specified in paragraph (3) of regulation 17 of the **Agency workers** Regulations 2010 (unless the case is one to which paragraph (4) of that regulation applies).”.

**16.** In section 108<sup>25</sup> (exclusion of right: qualifying period of **employment**) in subsection (3) cases where no qualifying period of **employment** is required) omit “or” at the end of paragraph (ep) and after paragraph (pq) insert—

“or (qr) paragraph (1) of regulation 17 of the **Agency workers** Regulations 2010 applies.”

---

<sup>24</sup> (a) Section 105 has been amended on a number of occasions to specify additional circumstances in which an **employee** dismissed by reason of redundancy is to be regarded as unfairly dismissed.

<sup>25</sup> (b) Section 108(3) has been amended on a number of occasions to specify additional cases where the qualifying period does not apply.

## PART 2 OTHER LEGISLATION

### The Management of Health and Safety at Work Regulations 1999

17.—(1) The Management of Health and Safety at Work Regulations 1999<sup>26</sup> are amended as follows.

(2) After regulation 16 insert—

**“Alteration of working conditions in respect of new or expectant mothers (agency workers)**

**16A.**—(1) Where, in the case of an individual **agency worker**, the taking of any other action the **hirer** is required to take under the relevant statutory provisions would not avoid the risk referred to in regulation 16(1) the **hirer** shall, if it is reasonable to do so, and would avoid such risks, alter her working conditions or hours of work.

(2) If it is not reasonable to alter the working conditions or hours of work, or if it would not avoid such risk, the **hirer** shall without delay inform the **temporary work agency**, who shall then end the supply of that **agency worker** to the **hirer**.

(3) In paragraphs (1) and (2) references to risk, in relation to risk from any infectious or contagious disease, are references to a level of risk at work which is in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace.”.

18. After regulation 17 insert—

**“Certificate from registered medical practitioner in respect of new or expectant mothers (agency workers)**

**17A.** Where—

(a) a new or expectant mother works at night; and

(b) a certificate from a registered medical practitioner or a registered midwife shows that it is necessary for her health or safety that she should not be at work for any period of such work identified in the certificate,

the **hirer** shall without delay inform the **temporary work agency**, who shall then end the supply of that **agency worker** to the **hirer**.”.

19. After regulation 18 insert—

**“Notification by new or expectant mothers (agency workers)**

**18A.**—(1) Nothing in regulation 16A(1) or (2) shall require the **hirer** to take any action in relation to an **agency worker** until she has notified the **hirer** in writing that she is pregnant, has given birth within the previous six months, or is breastfeeding.

(2) Nothing in regulation 16A(2) shall require the **temporary work agency** to end the supply of the **agency worker** until she has notified the **temporary work agency** in writing that she is pregnant, has given birth within the previous six months, or is breastfeeding.

(3) Nothing in regulation 16A(1) shall require the **hirer** to maintain action taken in relation to an **agency worker**—

(a) in a case—

(i) to which regulation 16A(1) relates; and

(ii) where the **agency worker** has notified the **hirer**, that she is pregnant, where she has failed, within a reasonable time of being requested to do so in writing by the **hirer**, to produce for the **hirer**'s inspection a certificate from a registered medical practitioner or a registered midwife showing that she is pregnant; or

(b) once the **hirer** knows that she is no longer a new or expectant mother; or

---

<sup>26</sup> (c) S.I. 1999/3242.

(c) if the **hirer** cannot establish whether she remains a new or expectant mother.

#### **Agency workers: general provisions**

**18AB.**—(1) Without prejudice to any other duties of the **hirer** or **temporary work agency** under any enactment or rule of law in relation to health and safety at work, regulation 16A, 17A and 18A shall not apply where the **agency worker**—

- (a) has not completed the qualifying period, or
- (b) is no longer entitled to the rights conferred by regulation 5 of the **Agency workers Regulations 2010** pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in regulations 16A or 17A imposes a duty on the **hirer** or **temporary work agency** beyond the original intended duration, or likely duration of the **assignment**, whichever is the longer.

(3) This regulation, and regulations 16A, 17A and 18A do not apply in circumstances where regulations 16, 17 and 18 apply.

(4) For the purposes of this regulation and regulations 16A, 17A or 18A the following have the same meaning as in the **Agency workers Regulations 2010**—

- “**agency worker**”;
- “**assignment**”;
- “**hirer**”;
- “qualifying period”;
- “**temporary work agency**”.

20. In regulation 20(1)(a) for “regulations 16-18”, substitute, “regulations 16-18AB”.

#### **The Information and Consultation of Employees Regulations 2004**

21. The Information and Consultation of **Employees Regulations 2004**<sup>27</sup> are amended as follows.

22. In regulation 2 (interpretation) after the definition of—

(a) “the **1996 Act**” insert—

““**agency worker**” has the same meaning as in regulation 3 of the **Agency workers Regulations 2010**;”;

(b) “standard information and consultation provisions” insert—

““suitable information relating to the use of **agency workers**” means information as to—

- (a) the number of **agency workers** working temporarily for and under the supervision and direction of the **employer**,
- (b) the parts of the **employer**'s undertaking in which those **agency workers** are working, and
- (c) the type of work those **agency workers** are carrying out.”.

23. After regulation 3 insert—

#### **“Agency workers**

**3A.**—(1) Paragraphs (2) and (3) apply to an **agency worker** whose contract within regulation 3(1)(b) of the **Agency workers Regulations 2010** (contract with the **temporary work agency**) is not a **contract of employment**.

---

<sup>27</sup> S.I. 2004/3426.

(2) For the purposes of regulations 3, 4 and Schedule 1, any **agency worker** who has a contract with a **temporary work agency** shall be treated as being **employed** by that **temporary work agency** for the duration of that **agency worker's assignment** with the **employer**.

(3) In these Regulations "**assignment**" has the same meaning as in regulation 2 and "**temporary work agency**" has the same meaning as in regulation 4, of the **Agency workers Regulations 2010**."

24. After regulation 8 insert—

**"Pre-existing agreements: agency workers**

**8A.** Where information about the **employment** situation is to be provided under a pre-existing agreement by an **employer**, such information must include suitable information relating to the use of **agency workers** (if any) in that undertaking."

25. In regulation 16(1), omit the "and" at the end of sub-paragraph (e).

26. In regulation 16(1), after sub-paragraph (f) add— "and

(g) provide that where an **employer** is to provide information about the **employment** situation, under that agreement or under any part, such information shall include suitable information relating to the use of **agency workers** (if any) in that undertaking."

27. In regulation 20, paragraph (1), sub-paragraph (b), after "the situation, structure and probable development of **employment** within the undertaking" and before "and on any anticipatory measures envisaged" insert "(and such information must include suitable information relating to the use of **agency workers** (if any) in that undertaking)".

#### **The Transfer of Undertakings (Protection of Employment) Regulations 2006**

28. The Transfer of Undertakings (Protection of **Employment**) Regulations 2006<sup>28</sup> are amended as follows.

29. In regulation 13, after paragraph (2) insert—

**"2A.** Where information is to be supplied under paragraph (2) by an **employer**— (a) this must include suitable information relating to the use of **agency workers** (if

any) by that **employer**; and (b) "suitable information relating to the use of **agency workers**" means—

(i) the number of **agency workers** working temporarily for and under the supervision and direction of the **employer**;

(ii) the parts of the **employer's** undertaking in which those **agency workers** are working; and

(iii) the type of work those **agency workers** are carrying out."

#### **The European Cooperative Society (Involvement of Employees) Regulations 2006**

30. The European Cooperative Society (Involvement of **Employees**) Regulations 2006<sup>29</sup> are amended as follows.

31. In regulation 3 (interpretation) after the definition in paragraph (1) of—

(a) "absolute majority vote" insert—

""**agency worker**" has the same meaning as in regulation 3 of the **Agency workers Regulations 2010**,";

(b) "Appeal Tribunal" insert—

""**assignment**" has the same meaning as in regulation 2 of the **Agency workers Regulations 2010**,";

(c) "**employees' representatives**" insert—

---

<sup>28</sup> S.I. 2006/246

<sup>29</sup> . S.I. 2006/2059.

“**hirer**” has the same meaning as in regulation 2 of the **Agency workers Regulations 2010**.”; and

(d) “standard rules on **employee** involvement” insert—

“suitable information relating to the use of **agency workers**” means—

- (a) the number of **agency workers** working temporarily for and under the supervision and direction of the SCE or any subsidiary, in each EEA State;
- (b) the parts of the SCE’s or subsidiary’s undertaking and the concerned establishments in which those **agency workers** are working; and
- (c) the type of work those **agency workers** are carrying out;

“**temporary work agency**” has the same meaning as in regulation 4 of the **Agency workers Regulations 2010**.”.

32. After regulation 6 insert—

**“Agency workers**

**6A.**—(1) Paragraph (2) applies to an **agency worker** whose contract within regulation 3(1)(b) of the **Agency worker’s Regulations 2010** (contract with the **temporary work agency**) is not a **contract of employment**.

(2) For the purposes of regulations 5 and 6, any **agency worker** who has a contract with a **temporary work agency**, that is a participating individual, participating legal entity or SCE, shall be treated as being **employed** by that **temporary work agency** for the duration of that **agency worker’s assignment** with the **hirer**.”.

33. In regulation 7, paragraph 2—

(a) omit the “and” at the end of sub-paragraph (c), and

(b) after sub-paragraph (d); add—

“(e) the number of **agency workers** working temporarily for and under the supervision and direction of a participating individual, legal entity or subsidiary;

(f) the parts of the undertaking and concerned establishments in which those **agency workers** are working; and

(g) the type of work those **agency workers** are carrying out.”.

34. After regulation 17, paragraph (5) insert—

“(6) Where under the **employee** involvement agreement information is to be provided on the **employment** situation in the SCE, such information must include suitable information relating to the use of **agency workers** (if any) in that SCE.”.

35. After regulation 21, paragraph (3) insert—

“(3A) For the purposes of paragraph (3), **agency workers**, whose contract within regulation 3(1)(b) of the **Agency workers Regulations 2010** was not a **contract of employment** with one or more temporary work agencies that were participating individuals or SCEs at the relevant time, are to be treated as having been **employed** by such a **temporary work agency** or agencies for the duration of any **assignment** with a **hirer**.”.

36. In Schedule 1, paragraph 1—

(a) omit the “and” at the end of sub-paragraph (2)(b); and

(b) after sub-paragraph (2)(c) add—

“(d) the number of **agency workers** working temporarily for and under the supervision and direction of the SCE or any subsidiary, in each EEA State;

(e) the parts of the undertaking or any establishment in which those **agency workers** are working; and

(f) the type of work those **agency workers** are carrying out.”.

37. After Schedule 1, paragraph 11, sub-paragraph (4) add—

“(5) Where under the **employee** involvement agreement the competent organ of the SCE is to provide information on the **employment** situation in the SCE, such information must include suitable information relating to the use of **agency workers** (if any) in that SCE.”.

38. After Schedule 2, paragraph 6, sub-paragraph (3) insert—

“3A. Where under sub-paragraphs (2) and (3) the competent organ of the SCE is to provide information on the **employment** situation in the SCE, such information must include suitable information relating to the use of **agency workers** (if any) in that SCE.”.

#### The Companies (Cross-Border Mergers) Regulations 2007

39. The Companies (Cross-Border Mergers) Regulations 2007<sup>30</sup> are amended as follows.

40. In regulation 3 (interpretation) after the definition in paragraph (1) of—

(a) “the **1996 Act**” insert—

““**agency worker**” has the same meaning as in regulation 3 of the **Agency workers Regulations 2010**;”;

(b) “the Appeal Tribunal” insert—

““**assignment**” has the same meaning as in regulation 2 of the **Agency workers Regulations 2010**;”;

(c) “the Gazette” insert—

““**hirer**” has the same meaning as in regulation 2 of the **Agency workers Regulations 2010**;”;

(d) “standard rules of **employee** participation” insert—

““suitable information relating to the use of **agency workers**” means—

(a) the number of **agency workers** working temporarily for and under the supervision and direction of a merging company or the transferee company (as the case may be);

(b) the parts of the undertaking in which those **agency workers** are working;  
and

(c) the type of work those **agency workers** are carrying out;

“**temporary work agency**” has the same meaning as in regulation 4 of the **Agency workers Regulations 2010**.”.

41. After regulation 8, paragraph (2) insert—

“(2A) Where information to be provided under paragraph (2)(a) relates to the **employment** situation, it must include suitable information relating to the use of **agency workers**.”.

42. After regulation 22, paragraph (1) insert—

“(1A) For the purposes of paragraph (1)(a), **agency workers** whose contract within regulation 3(1)(b) of the **Agency workers Regulations 2010** was not a **contract of employment** with one or more temporary work agencies that were merging companies at the relevant time are to be treated as having been **employed** by such a **temporary work agency** or agencies for the duration of their **assignment** with a **hirer**.”.

43. After regulation 23(3) add—

“(4) Where under the provisions of this regulation a merging company is to provide information, such information must include suitable information relating to the use of **agency workers** (if any) in that company.”.

---

<sup>30</sup> S.I. 2007/2974.

44. After regulation 29(2) insert—

“(2A) Where under the **employee** participation agreement the transferee company is to provide information on the **employment** situation in that company, such information must include suitable information relating to the use of **agency workers** (if any) in that company. ”.

45. After regulation 37, paragraph (2) insert—

“(2A) For the purposes of paragraph (2), **agency workers** whose contract within regulation 3(1)(b) of the **Agency workers** Regulations 2010 was not a **contract of employment** with one or more temporary work agencies that were merging companies at the relevant time, are to be treated as having been **employed** by such a **temporary work agency** or agencies for the duration of their **assignment** with a **hirer**.”.

46. After regulation 38(4) add—

“(5) Where under the standard rules of **employee** participation the transferee company is to provide information on the **employment** situation in that company, such information must include suitable information relating to the use of **agency workers** (if any) in that company. ”.

#### **The European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009**

47. The European Public Limited-Liability Company (**Employee** Involvement) (Great Britain) Regulations 2009<sup>31</sup> are amended as follows.

48. In regulation 3 (interpretation) after the definition in paragraph (1)—

(a) of “absolute majority vote” insert—

““**agency worker**” has the same meaning as in regulation 3 of the **Agency workers** Regulations 2010;” and

(b) of “standard rules on **employee** involvement” insert—

““suitable information relating to the use of **agency workers**” means—

- (a) the number of **agency workers** working temporarily for and under the supervision and direction of the undertaking;
- (b) the parts of the undertaking in which those **agency workers** are working;  
and
- (c) the type of work those **agency workers** are carrying out.”.

49. In regulation 5, paragraph (2)—

(a) omit the “and” at the end of sub-paragraph (b); and

(b) after sub-paragraph (c) insert—

“(d) the number of **agency workers** working temporarily for and under the supervision and direction of the undertaking;

(e) the parts of the undertaking in which those **agency workers** are working; and

(f) the type of work those **agency workers** are carrying out.”.

50. After regulation 15, paragraph (3) insert—

“(3A) Where under the **employee** involvement agreement the competent organ of the SE is to provide information on the **employment** situation in that company, such information must include suitable information relating to the use of **agency workers** (if any) in that company. ”.

51. After regulation 19, paragraph (3) insert—

“(3A) This paragraph applies to an **agency worker** whose contract within regulation 3(1)(b) of the **Agency workers** Regulations 2010 (contract with the **temporary work agency**) is not a **contract of employment**—

---

<sup>31</sup> (a) S.I. 2009/2401.

(a) for the purposes of paragraph (3)(a) and (b), any **agency worker** who has a contract with a **temporary work agency**, which was at the relevant time a participating company, is to be treated as having been **employed** by that **temporary work agency** for the duration of their **assignment** with a **hirer**, and

(b) in this paragraph “**assignment**” and “**hirer**” have the same meaning as in regulation 2, and “**temporary work agency**” has the same meaning as in regulation 4, of the **Agency workers Regulations 2010**.”.

**52.** In the Schedule, Part 2, after paragraph 8 insert—

“**8A.** Where under the provisions of this Part, the competent organ of the SE is to provide information on the **employment** situation in that company, such information must include suitable information relating to the use of **agency workers** (if any) in that company.”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which are made under section 2(2) of the European Communities Act 1972 (c.68), and sections 15(1), (2) and (5), 82(3) of, and paragraphs 7, 8 and 15(1) of Schedule 3 to the Health and Safety at Work etc Act 1974 (c.37) implement (in England and Wales and Scotland and, in relation to some provisions, also Northern Ireland) Council Directive 2008/104/EC of 19th November 2008 on temporary agency work (OJ L 327, 5.12.2008, p.9). This Directive establishes a general framework for protection of temporary **agency workers**. The Regulations provide certain rights for temporary **agency workers** including in relation to basic working and **employment** conditions.

Regulations 2 to 4 provide definitions, including those of '**agency worker**' and '**temporary work agency**'. Regulation 5 provides a right for the **agency worker** to the same basic working and **employment** conditions as the **agency worker** would have been entitled to if they had been recruited directly by the **hirer**. Regulation 6 specifies that it is terms and conditions in the **hirer** relating to pay, the duration of working time, night work, rest periods, rest breaks and annual leave that are relevant.

Regulation 7 makes provision for a qualifying period, and sets out the conditions which need to be met to qualify for the right provided for by regulation 5. Regulation 8 sets out the consequences that arise when an **agency worker** has completed the qualifying period.

Regulation 9 sets out the circumstances in which an **agency worker** is to be treated as having completed the qualifying period and, where applicable, is to be treated as continuing to be entitled to those rights.

Regulation 10 disapplies regulation 5, insofar as it relates to pay, where a permanent **contract of employment** is entered into between a **temporary work agency** and the **agency worker**. It provides a number of conditions that must be fulfilled in relation to the form and terms of the permanent contract and for a minimum amount of pay to be paid to the **agency worker** between **assignments**. Regulation 11 sets out how that minimum amount of pay is to be calculated.

Regulations 12 and 13 give rights to **agency workers** in relation to access to collective facilities and amenities provided by the **hirer**, and access to **employment** with the **hirer**.

Regulation 14 deals with issues of liability. **Agency workers** are involved in a triangular relationship involving the **temporary work agency** and **hirer**. This regulation provides that the **temporary work agency** and **hirer** can both be liable to the extent that they are responsible for a breach of regulation 5, and sets out the circumstances in which a **temporary work agency** is not responsible for a breach of that regulation. Regulation 14 also provides that the **hirer** is liable for breaches of regulations 12 and 13. Regulation 15 makes provision in relation to restrictions on contracting out.

Regulation 16 provides a right for the **agency worker** to receive information from the **temporary work agency**, or **hirer** as applicable, in relation to the rights and duties conferred by regulations 5, 12 and 13.

Regulation 17 makes provision in relation to the right not to be unfairly dismissed or subjected to a detriment for a reason relating to these Regulations. Regulation 18 provides remedies for individuals, including compensation, by way of proceedings in **employment** tribunals. Regulation 18 includes provision for a minimum award of two weeks' pay, and for an additional award of up to £5,000 where regulation 9 applies. Regulation 20 deals with the liability of **employers** and principals.

Regulations 21 to 24 contain provisions which make the Regulations applicable to Crown **employment**, the armed services, the House of Lords, the House of Commons and the police service.

Schedule 1 lists the particular provisions of these Regulations which extend to Northern Ireland.

34

Schedule 2 contains consequential amendments to primary and secondary legislation (including in relation to disclosure of information about **agency workers**, collective bargaining and health and safety matters).

An Impact Assessment report of the effect that these Regulations will have on the costs to business and a Transposition Note, showing how the Directive has been given effect by these Regulations, are available from the **Employment** Relations Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET. Copies of each have also been placed in the libraries of both Houses of Parliament.

---

□ Crown copyright 2010 Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller

of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

35

E5792 01/2010 105792T 19585