
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.

Status: *This is the original version (as it was originally made).*

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

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.