

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 000

TERMS AND CONDITIONS OF EMPLOYMENT

The Agency Workers (Amendment) Regulations 2019

Made - - - - *******
Coming into force - - *6th April 2020*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to employment rights and duties(2) and, in exercise of the powers conferred by that subsection, makes the following Regulations.

In accordance with paragraph 2(2) of Schedule 2 to that Act(3), a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Agency Workers (Amendment) Regulations 2019 and come into force on 6th April 2020.

(2) These Regulations extend to England and Wales and Scotland only.

Interpretation

2. In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996(4);

“the 2010 Regulations” means the Agency Workers Regulations 2010(5); and

“contract of employment”, “agency worker” and “temporary work agency” have the meanings respectively given in regulations 2, 3 and 4 of the 2010 Regulations.

(1) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) and Schedule 1, Part 1 of the European Union (Amendment) Act 2008 (c. 7).
(2) S.I. 2000/738.
(3) Paragraph 2(2) of Schedule 2 was amended by section 27(2)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51).
(4) 1996 c. 18.
(5) S.I. 2010/93. Regulation 3 was amended by regulation 2(2) of S.I. 2011/1941. Regulation 10(1) was amended by regulation 2(1) and (3) of S.I. 2011/1941. Regulation 11(3) was amended by regulation 8 of S.I. 2010/1901 and by regulation 3 of S.I. 2012/2397. Regulation 18(4A) was added by Schedule 1, paragraph 62 of S.I. 2014/386. Regulation 18A was added by Schedule 1, paragraph 63 of S.I. 2014/386. Regulation 24 was amended by Schedule 8(4), paragraph 190 of the Crime and Courts Act 2013 (c. 22).

Amendments to the Agency Workers Regulations 2010

3.—(1) The 2010 Regulations are amended as follows.

- (2) In regulation 5, omit paragraph (6).
- (3) In regulation 7(4), omit “and regulation 10”.
- (4) Omit regulations 10 and 11.
- (5) In regulation 18—
 - (a) omit paragraph (3);
 - (b) in paragraph (4)(a), omit “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)”;
 - (c) in paragraph (6)(a), omit “or breaches regulation 10(1),”;
 - (d) in paragraph (6)(b), omit “or 10(1)”;
 - (e) in paragraph (12)(a), omit “or 10”;
 - (f) in paragraph (12)(b), omit “or 10”;
 - (g) in paragraph (15), omit “or breaches regulation 10(1)(b), (c), or (d), or breaches a term of the contract described in regulation 10(1)(a)”.

Requirement to provide written statement

4.—(1) Where a contract of employment which is in effect when these Regulations come into force contains a statement for the purposes of regulation 10(1)(b) of the 2010 Regulations (“the original statement”), the temporary work agency which is party to that contract of employment must, in accordance with paragraph (2), provide a written statement to the agency worker that, with effect from 6th April 2020—

- (a) the agency worker is entitled to rights relating to pay as part of the rights conferred by regulation 5 of the 2010 Regulations, subject to completion of the qualifying period as stated in regulation 7 of those regulations; and
- (b) the original statement no longer has effect.

(2) A written statement under paragraph (1) must be provided on or before 30th April 2020, unless the contract of employment is terminated on or before that date.

(3) An agency worker may present a complaint to an employment tribunal that a temporary work agency has infringed the right to be provided with a written statement conferred on the agency worker by this regulation.

(4) Paragraphs (4)(a), (4A), (5), (6), (7), (8), (10), (11), (12), (13), (15), (16), (17) and (18) of regulation 18 and regulations 18A, 19 and 20 of the 2010 Regulations apply to a complaint under paragraph (3) in the same way as to a complaint under regulation 18(2) of the 2010 Regulations but with the modification that references to rights conferred by regulation 5 of the 2010 Regulations are to be treated as references to the right to be provided with a written statement conferred by this regulation.

Unfair dismissal and the right not to be subjected to detriment

5.—(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 deliberate failure to act, of the temporary work agency which is the employer of the agency worker, 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) otherwise did anything under these Regulations in relation to a temporary work agency or other person;
 - (iv) alleged that the temporary work agency which is the employer of the agency worker has breached these Regulations;
 - (v) refused (or proposed to refuse) to forgo a right conferred by these Regulations; or
 - (b) that the 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)(iv), or paragraph (3)(b) so far as it relates to paragraph (3)(a)(iv), 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.

(6) Subject to paragraph (5), an agency worker may present a complaint to an employment tribunal that a temporary work agency has infringed a right conferred on the agency worker by this regulation.

(7) Paragraphs (4)(a), (4A), (5), (6), (7), (8), (10), (11), (12), (13), (16), (17) and (18) of regulation 18 and regulations 18A, 19 and 20 of the 2010 Regulations apply to a complaint under paragraph (6) in the same way as to a complaint under regulation 18(2) of the 2010 Regulations, but with the modification that references to rights conferred by regulation 17(2) of the 2010 Regulations are to be treated as references to rights conferred by this regulation.

Special classes of person

6.—(1) Regulations 21 to 24 of the 2010 Regulations apply for the purposes of giving effect to these Regulations in the case of the persons referred to in regulations 21 to 24 in the same way and to the same extent as the 2010 Regulations apply to those persons.

- (2) Accordingly, for those purposes—
- (a) references in regulations 21 to 24 to the 2010 Regulations are to be treated as references to these Regulations; and
 - (b) the reference in regulation 24 to regulation 20 of the 2010 Regulations is to be treated as a reference to regulation 20 as it applies to these Regulations in accordance with regulations 4 and 5.

Saving provision

7. Nothing in these Regulations affects the application of the 2010 Regulations to complaints which relate to breaches of the 2010 Regulations which occurred prior to these Regulations coming into force.

Consequential amendments

- 8.—(1) The Employment Rights Act 1996 is amended as follows.

- (2) For subsection (7N) of section 105 substitute—
- “(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—
- (a) paragraph (3) of regulation 17 of the Agency Workers Regulations 2010 (unless the case is one to which paragraph (4) of that regulation applies); or
- (b) paragraph (3) of regulation 5 of the Agency Workers (Amendment) Regulations 2019 (unless the case is one to which paragraph (4) of that regulation applies).”.
- (3) The Employment Tribunals Act 1996⁽⁶⁾ is amended as follows.
- (4) In subsection (1) of section 18—
- (a) after paragraph (z4), omit “, or”; and
- (b) after paragraph (z5), insert—
- “, or
- (z6) under paragraph (3) of regulation 4 or paragraph (6) of regulation 5 of the Agency Workers (Amendment) Regulations 2019.”.

Review

- 9.—(1) The Secretary of State must from time to time—
- (a) carry out a review of the regulatory provisions contained in—
- (i) regulations 4 and 5; and
- (ii) the 2010 Regulations, to the extent only of the effect of the amendments made by regulation 3 of these Regulations; and
- (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before 6th April 2025. Subsequent reports must be published at intervals not exceeding 5 years. Section 30(4) of the Small Business, Enterprise and Employment Act 2015⁽⁷⁾ requires that a report published under this regulation must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory provisions referred to in sub-paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (3) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Date

Name
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial
Strategy

⁽⁶⁾ 1996 c.17.
⁽⁷⁾ 2015 c. 26.

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, amend the Agency Workers Regulations 2010 (“the 2010 Regulations”). The 2010 Regulations 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 2010 Regulations provide certain rights for temporary agency workers including in relation to basic working and employment conditions. Regulation 5 of those regulations 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 10 of the 2010 Regulations 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 of the 2010 Regulations sets out how that minimum amount of pay is to be calculated.

Regulation 3 amends the 2010 Regulations by omitting regulation 10 and 11 and other provisions consequential on those regulations. This means that it will no longer be possible for regulation 5 of the 2010 Regulations to be disapplied in relation to pay as described above.

Regulation 4 requires a temporary work agency to give a written statement to the agency worker where the temporary work agency and the agency worker have entered a permanent contract of employment which is in effect when these Regulations come into force and has the effect that the agency worker does not have any entitlement to the rights conferred by regulation 5 of the 2010 Regulations insofar as they relate to pay. The written statement must inform the agency worker that, with effect from 6th April 2020, the agency worker is entitled to the rights relating to pay which are conferred by regulation 5 of the 2010 Regulations. It must be given by 30th April 2020. Where there is a breach of the requirement to give a written statement, the agency worker may bring a complaint to an employment tribunal, where the remedies available include compensation.

Regulation 5 provides the right not to be unfairly dismissed or subjected to a detriment for a reason relating to these Regulations.

Regulation 6 makes the Regulations applicable to Crown employment, the armed services, the House of Lords, the House of Commons and the police service, with certain qualifications.

Regulation 7 provides that the 2010 Regulations apply as if unamended to any complaints which relate to relevant breaches of the 2010 Regulations which occurred prior to these Regulations coming into force.

Regulation 9 requires the Secretary of State to review these Regulations at intervals not exceeding five years, as contemplated by section 28 of the Small Business, Enterprise and Employment Act 2015.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London, SW1H 0ET and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Agency Workers (Amendment) Regulations 2019 No. 724