

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

PART 1

PRIMARY LEGISLATION

11. After section 57 insert—

“Ante-natal care: agency workers

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

57ZA (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 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

57ZB (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

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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

57ZC (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

57ZD (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

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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”.

Changes to legislation:

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