

2020 No. 384

TERMS AND CONDITIONS OF EMPLOYMENT

The Posted Workers (Agency Workers) Regulations 2020

<i>Made</i>	- - - -	<i>30th March 2020</i>
<i>Laid before Parliament</i>		<i>31st March 2020</i>
<i>Coming into force</i>	- -	<i>30th July 2020</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to employment rights and duties(b).

The Secretary of State and the Lord Chancellor, acting jointly, in exercise of the powers conferred by section 18(8) and (9) of the Employment Tribunals Act 1996(c) and section 2(2) of the European Communities Act 1972, make the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Posted Workers (Agency Workers) Regulations 2020 and come into force on 30th July 2020.

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

Interpretation

2. In these Regulations, a reference to a member State includes an EEA state, and “the 2010 Regulations” means the Agency Workers Regulations 2010(d).

Modifications to the Agency Workers Regulations 2010

3.—(1) The 2010 Regulations are to be read—

(a) as if after regulation 13, there were inserted—

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- (a) 1972 c.68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (b) Article 2 of, and the Schedule to, the European Communities (Designation) Order 2000 (S.I. 2000/738).
- (c) 1996 c. 17; by virtue of section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) industrial tribunals were renamed employment tribunals and references to “industrial tribunal” in any enactment were substituted with “employment tribunal”. Section 18(8) was amended by the Tribunals, Courts and Enforcement Act 2007 (c. 15), Schedule 8, paragraphs 35 and 38, and the Enterprise and Regulatory Reform Act 2013 (c. 24), section 9; section 18(9) was inserted by the Enterprise and Regulatory Reform Act 2013, section 9.
- (d) S.I. 2010/93; regulation 3 was amended by regulation 2(2) of S.I. 2011/1941; regulation 5 was amended by regulation 3(2) of S.I. 2019/724; regulation 7(4) was amended by regulation 3(3) of S.I. 2019/724; regulation 10 was revoked by S.I. 2019/724; regulation 11 was revoked by S.I. 2019/724; regulation 18 was amended by regulation 2019/724; 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, paragraph 190 to the Crime and Courts Act 2013 (c.22).

“13A Hirer to inform temporary work agency of posting to a different member State

A hirer that proposes to post an agency worker for a limited period to carry out work in the territory of a member State in which the agency worker does not normally work, must, within a reasonable time prior to the commencement of the posting, inform the temporary work agency of—

- (a) the member State of the posting; and
 - (b) the date on which the posting will commence.”; and
- (b) in accordance with the further modifications in the rest of this regulation.
- (2) Regulation 2 is to be read as if there were inserted after the definition of hirer—
- ““posting” means the posting of an agency worker in accordance with regulation 13A;”.
- (3) Regulation 14(6) is to be read as if for “or 13”, there were substituted “13, or 13A”.
- (4) Regulation 18 is to be read as if—
- (a) after paragraph (3), there were inserted—

“(3A) Subject to paragraph (3B), a temporary work agency may present a complaint to an employment tribunal that the hirer has failed to comply with regulation 13A(a).

(3B) Paragraph (3A) does not apply where a temporary work agency has commenced other civil proceedings against the hirer for the recovery of the same or substantially the same loss as would be pursued under paragraph (3A) and those proceedings are continuing.”;
 - (b) in paragraph (4), after sub-paragraph (b)(b), there were inserted—

“(c) in the case of an alleged failure to comply with regulation 13A, with the date that the temporary work agency becomes aware of the posting.”;
 - (c) in paragraph (8), at the beginning of sub-paragraph (c), there were inserted “except in relation to a complaint that a hirer has failed to comply with regulation 13A,”;
 - (d) in paragraph (10)—
 - (i) after “paragraphs”, there were inserted “(11A),”;
 - (ii) in sub-paragraph (b) after “infringement”, there were inserted “or breach.”;
 - (e) in paragraph (11)—
 - (i) at the beginning, for “The” there were substituted “Subject to paragraph (11A), the”;
 - (ii) at the beginning of sub-paragraph (b), there were inserted “except in relation to a complaint of a failure by a hirer to comply with regulation 13A,”;
 - (f) after paragraph (11), there were inserted—

“(11A) In respect of an award of compensation made to a temporary work agency for a breach by a hirer of regulation 13A, the loss shall be limited—

 - (a) to losses arising out of any breach by the temporary work agency of the provisions of national law of a member State relating to the requirements under article 3(1) of the Posted Workers Directive, including where loss is incurred by the imposition of any EU penalty arising out of such a breach; and
 - (b) to the extent only that the loss sustained is reasonably attributable to a breach by the hirer of regulation 13A.

(11B) In paragraph (11A)—

(a) Regulation 18(3) of the AWR 2010 has been revoked subject to savings by S.I. 2019/724.

(b) Regulation 18(4) of the AWR 2010 has been amended subject to savings by S.I. 2019/724.

“competent authority” means a competent authority designated by a member State for the purposes of Directive 2014/67/EU(a);

“EU penalty” means a financial administrative penalty or fine including fees and surcharges relating to non-compliance with the provisions of national law of a member State relating to the Posted Workers Directive—

- (a) imposed on a temporary work agency by a competent authority in a member State other than the United Kingdom; or
- (b) confirmed by an administrative or judicial body in a member State other than the United Kingdom as payable by a temporary work agency;

“Posted Workers Directive” means Directive 96/71/EC(b) as amended by Directive 2018/957/EU(c).”.

Consequential modifications

4. The Employment Tribunals Act 1996 is to be read as if in subsection (1) of section 18(d)—

- (a) after paragraph (z5), there were omitted “or”; and
- (b) after paragraph (z6), there were inserted—

“, or

(z7) under regulation 5 of the Posted Workers (Agency Workers) Regulations 2020.”.

Expiry of regulations 3 and 4 and saving provision

5.—(1) Regulations 3 and 4 expire on IP completion day.

(2) Despite the expiry of regulations 3 and 4, the 2010 Regulations and the Employment Tribunals Act 1996 are to continue to be read after IP completion day with the modifications made by regulations 3 and 4 so far as those regulations apply to cases where a temporary work agency brings or has brought a complaint under regulation 18 of the 2010 Regulations in relation to a posting which began prior to IP completion day.

Signed by the authority of the Lord Chancellor

30th March 2020

Chris Philp
Parliamentary Under Secretary of State
Ministry of Justice

30th March 2020

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

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- (a) Council Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, OJ No L 159, 28.05.2014, p. 11.
 - (b) Council Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ No L 18, 21.01.1997, p.1.
 - (c) Council Directive 2018/957/EU amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ No L 173, 9.7.2018, p.16.
 - (d) Section 18(1) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 15, Schedule 1, paragraph 16 and section 11(1); the Employment Act 2002, (c. 22), Schedule 7, paragraph 23(2)(a), Schedule 7, paragraph 23(2)(b)(ii) and Schedule 7 paragraph 23(2)(c); the Employment Relations Act 2004 (c. 24), Schedule 1, paragraph 25; the Pensions Act 2008 (c. 30), section 56(6); the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), Schedule 1, paragraph 16; the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 1, paragraph 5(3), Schedule 1, paragraph 5(4)(a), Schedule 1 paragraph 5(4)(b), Schedule 1 paragraph 5(5), Schedule 1 paragraph 5(6) and Schedule 1, paragraph 5(7); S.I. 1833/1998; S.I. 1299/2000; S.I. 1551/2000; S.I. 1107/2001; S.I. 2034/2002; S.I. 1660/2003; S.I. 1661/2003; S.I. 1673/2003; S.I. 1713/2004; S.I. 3426/2004; S.I. 349/2006; S.I. 1031/2006; S.I. 2059/2006; S.I. 2974/2007; S.I. 1660/2008; S.I. 2401/2009; S.I. 93/2010; S.I. 493/2010; S.I. 1031/2010; S.I. 2279/2010; S.I. 308/2014; S.I. 431/2014; S.I. 2054/2015; S.I. 539/2016; S.I. 58/2018; S.I. 579/2018; S.I. 348/2019; S.I. 724/2019.

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 (which provision remains in force for the transition period due to the European Union (Withdrawal) Act 2018) and sections 18(8) and 18(9) of the Employment Tribunals Act 1996, implement provisions of Directive 2018/957/EU of the European Parliament and of the Council of 28 June 2018 (OJ L 173, 9.7.2018) amending Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services (OJ 18, 21/01/1997) (“the Directive” and “the Posted Workers Directive” respectively). These Regulations implement the Directive by modifying 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 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p.9) (“the Agency Workers Directive”). The Agency Workers Directive establishes a general framework for protection of temporary agency workers.

Regulation 1 specifies that the Regulations come into force on 30 July 2020 and extend to England and Wales, and Scotland.

Regulation 3(1) modifies the 2010 Regulations by requiring a hirer that proposes to post an agency worker for a limited period to a member State to inform the temporary work agency of the location and proposed start date of the posting a reasonable time before the posting is due to commence.

Regulation 3(4) modifies the 2010 Regulations to enable a temporary work agency to bring a claim in the Employment Tribunal against the hirer to recover any losses the temporary work agency may suffer as a result of a penalty imposed by a member State for failure to comply with the provisions of the Directive or the Posted Workers Directive. It also prevents a temporary work agency from bringing such a claim if it is pursuing such losses through other civil proceedings.

Regulation 4 modifies the Employment Tribunals Act 1996 to enable early conciliation of claims brought pursuant to the modified regulations.

Regulation 5 expires the modifications made to the 2010 Regulations and Employment Tribunals Act 1996 on IP completion day (the day on which the transition period for withdrawal by the UK from the European Union is complete), and these two enactments revert to the text that was in force in each respectively without the modifications made by regulations 3 and 4. Regulation 5 also makes a saving provision to allow a temporary work agency to continue to pursue a claim, or conciliate one, after IP completion day, where a breach of regulation 13A of the 2010 Regulations occurs prior to IP completion day.

A transposition note is attached to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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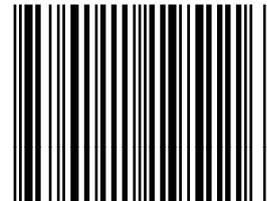
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