Subsidiary Legislation made under s. 86(1)(g).

Agency Workers Regulations 2012

LN.2012/062

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Amending enactments	Relevant current provisions	Commencement date
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LN. 2019/052	r. 8(2)	21.3.2019
2020/539	r. 31(4)	1.1.2021

Transposing:
Directive 2008/104/EC

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In exercise of the powers conferred on him by section 86(1)(g) of the Employment Act, and for the purpose of transposing into the law of Gibraltar Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, the Minister has made the following Regulations−

Title and commencement.

1. These Regulations may be cited as the Agency Workers Regulations 2012 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations−

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

"basic working and employment conditions" means working and employment conditions laid down by any enactment or rule of law, administrative provisions, collective agreements and/or other binding general provisions in force in relation to hirers in respect of−

(a) the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays; and

(b) pay;

"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,

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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

"Employment Tribunal" means the Tribunal established under rule 3 of the Employment Tribunal Rules;

"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.

(2) These Regulations shall be without prejudice to any enactment or rule of law as regards the definition of pay, contract of employment, employment relationship or worker.

The meaning of agency worker.

3.(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 to perform work and services personally for the agency.

(2) But an individual is not an agency worker if−

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(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 subregulation (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 subregulation (3) as having been supplied by a temporary work agency, shall be treated, for the purposes of subregulation (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) Subregulation (5) does not prejudice the generality of subregulations (1) to (4).

The meaning of temporary work agency.

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4.(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 subregulation (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.

Application of these Regulations.

5.(1) These Regulations apply to–

(a) workers with a contract of employment or employment relationship with a temporary work agency who are assigned to hirers to work temporarily under their supervision and direction; and

(b) public and private undertakings which are temporary-work agencies or hirers engaged in economic activities whether or not they are operating for gain.

(2) The Minister may, after consulting the social partners, provide by order that these Regulations shall not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme.

(3) Workers, contracts of employment or employment relationships shall not be excluded from the scope of these Regulations solely because they relate to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary work.

(4) Where the context so requires, these Regulations shall be construed in such manner as may be required for the purpose of attaining the following objectives–

(a) the protection of temporary agency workers; and

(b) the improvement of the quality of temporary agency work by–

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(i) ensuring that the principle of equal treatment, as set out in regulations 6 to 12 and 17 to 29, is applied to temporary agency workers, and

(ii) recognising temporary work agencies as employers,

while taking into account the need to establish a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working.

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

6.(1) Subject to regulation 8, 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,

and, without prejudice to any other enactment or rule of law, such entitlement includes−

(c) the right for men and women to be treated equally; and

(d) the right to participate in any scheme or programme aimed at combating any discrimination based on sex, race or ethnic origin, beliefs, disabilities, age or sexual orientation.

(2) For the purposes of subregulation (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; and

(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) Subregulation (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

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(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 subregulation (3) an employee is a comparable employee in relation to an agency worker if at the time when the breach of subregulation (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 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 11.

Relevant terms and conditions.

7.(1) In regulation 6(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 subregulation (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,

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holiday pay or other emolument referable to the employment, whether payable under contract or otherwise, but excluding any payments or rewards within subregulation (3).

(3) The payments or rewards referred to in subregulation (2) 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 maternity leave under the Employment (Maternity and Parental Leave, and Health and Safety) Regulations, 1996;

(h) a guarantee payment under sections 44 and 45 of the Employment Act;

(i) any payment in respect of expenses incurred by the worker in carrying out the employment; and

(j) any payment to the worker otherwise than in that person's capacity as a worker.

(4) For the purposes of subregulations (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−

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"financial participation scheme" means any scheme that offers workers of the hirer–

(a) a distribution of shares or options; or

(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 Act 1999 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 Act 1999 under a working time agreement; and

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"working time agreement", in relation to an individual, means a workforce agreement within the meaning of section 2 of the Working Time Act 1999, 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.

Qualifying period.

8.(1) Regulation 6 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 9 and 10, 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 11, 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 9 and 10, 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) subregulation (8) applies to that break; and

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(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 9, 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 subregulation (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; and

(b) the agency worker is deemed to be working in that role in accordance with subregulation (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 subregulation (6) or any part of that period, does not affect the operation of that subregulation.

(8) This subregulation 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 subregulation (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,

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(ii) ordinary or additional adoption leave,

(iii) paternity leave,

(iv) time off or other leave not listed in paragraph (d)(i), (ii) or (iii), or

(v) for more than one of the reasons listed in 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 Jury Rules, the Coroner Act, or any other enactment, 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;

(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 paragraph (b), (c), (d), (e), (f) or (g).

(9) Subregulation (8)(b) only applies where−

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

(b) subregulation (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 subregulation (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 subregulation (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 the coming into operation of these Regulations does not count for the purposes of this regulation.

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Completion of the qualifying period and continuation of the regulation 6 rights.

9. Where an agency worker has completed the qualifying period with a particular hirer, the rights conferred by regulation 6 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 8(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 8(8) does not apply.

Structure of assignments.

10.(1) Notwithstanding subregulations (1) and (2) of regulation 8, and regulation 9, if subregulations (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 subregulation (3).

(2) Notwithstanding subregulations (1) and (2) of regulation 8, and regulation 9, if subregulations (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 6, but

(b) would be so entitled but for the structure of the assignment or assignments mentioned in subregulation (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 subregulation 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 8(3).

(4) This subregulation applies where−

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(a) the most likely explanation for the structure of the assignment, or assignments, mentioned in subregulation (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 6; and

(b) the agency worker would be entitled to, or would continue to be entitled to, the rights conferred by regulation 6 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 subregulation (3) shows that the most likely explanation for it is that mentioned in subregulation (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 8(3);

(d) the number of times the agency worker has returned to work in the same role within the meaning of regulation 8(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.

Permanent contracts providing for pay between assignments.

11.(1) To the extent to which it relates to pay, regulation 6 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-

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(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 6 insofar as they relate to pay;

(c) during any period under the 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 paragraph (c) for an aggregate of not less than 4 calendar weeks during the contract.

(2) For work to be suitable for the purposes of subregulation (1)(c) the nature of the work, and the terms and conditions applicable to the agency worker whilst performing the work, must

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not differ from the nature of the work and the terms and conditions included in the contract of employment under subregulation (1)(a).

Calculating the minimum amount of pay.

12.(1) Subject to subregulation (3), the minimum amount to be paid to the agency worker during a pay reference period falling within a period to which regulation 11(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 subregulation (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) For the purposes of calculating the minimum amount as set out in subregulation (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.

(4) 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.

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

13.(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 subregulation (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 subregulation (1) an individual is a comparable worker in relation to an agency worker if at the time when the breach of subregulation (1) is alleged to take place−

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(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 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 paragraphs (a) and (b), is a worker of the hirer and satisfies those requirements.

Rights of agency workers in relation to access to employment.

14.(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 subregulation (1) an individual is a comparable worker in relation to an agency worker if at the time when the breach of subregulation (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 paragraphs (a) and (b), is a worker of the hirer and satisfies those requirements.

(3) For the purposes of subregulation (1), an individual is not a comparable worker if that individual's employment with the hirer has ceased.

(4) For the purposes of subregulation (1) the hirer may inform the agency worker by a general announcement in a suitable place in the hirer's establishment.

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Restriction on detrimental action relating to agency workers working elsewhere.

15.(1) No temporary work agency may (whether by the inclusion of a term in a contract with an agency worker or otherwise)−

(a) subject or threaten to subject an agency worker to any detriment on the ground that the agency worker has terminated or given notice to terminate any contract between the agency worker and the temporary work agency; or

(b) require the agency worker to notify the temporary work agency of the identity of any future employer of the agency worker.

(2) For the avoidance of doubt, the following shall not constitute a detriment within the meaning of subregulation (1)(a)−

(a) the loss of any benefits to which the agency worker might have become entitled had he not terminated the contract;

(b) the recovery of losses incurred by any temporary work agency as a result of the failure of the agency worker to perform work he has agreed to perform; or

(c) a requirement in a contract with the temporary work agency for the agency worker to give a period of notice which is reasonable to terminate the contract.

Restriction on charges to hirers.

16.(1) Any term of a contract between any temporary work agency and a hirer which is contingent on an agency worker taking up employment with the hirer is unenforceable by the temporary work agency in relation to that agency worker unless the contract provides that instead of a transfer fee the hirer may by notice to the temporary work agency elect for a hire period of such length as is specified in the contract during which the agency worker will be supplied to the hirer−

(a) in a case where there has been no supply, on the terms specified in the contract; or

(b) in any other case, on terms no less favourable to the hirer than those which applied immediately before the temporary work agency received the notice.

(2) In subregulation (1), "transfer fee" means any payment in connection with the agency worker taking up employment with the hirer.

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(3) Any term as mentioned in subregulation (1) is unenforceable where the temporary work agency does not supply the agency worker to the hirer, in accordance with the contract, for the duration of the hire period referred to in subregulation (1) unless the hirer is in no way at fault.

(4) Any term of a contract between any temporary work agency and a hirer which is contingent on any of the following events, namely an agency worker−

(a) taking up employment with the hirer;

(b) taking up employment with any person (other than the hirer) to whom the hirer has introduced him; or

(c) working for the hirer pursuant to being supplied by another temporary work agency,

is unenforceable by the temporary work agency in relation to the event concerned where the agency worker begins such employment or begins working for the hirer pursuant to being supplied by another temporary work agency, as the case may be, after the end of the relevant period.

(5) In subregulation (4), "the relevant period" means whichever of the following periods ends later, namely−

(a) the period of 8 weeks commencing on the day after the day on which the agency last worked for the hirer pursuant to being supplied by the temporary work agency; or

(b) subject to subregulation (6), the period of 14 weeks commencing on the first day on which the agency worker worked for the hirer pursuant to the supply of that agency worker to that hirer by the temporary work agency.

(6) In determining for the purposes of subregulation (5)(b) the first day on which the agency worker worked for the hirer pursuant to the supply of that agency worker to that hirer by the temporary work agency, no account shall be taken of any supply that occurred prior to a period of more than 42 days during which that agency worker did not work for that hirer pursuant to being supplied by that temporary work agency.

(7) No temporary work agency shall−

(a) seek to enforce against the hirer, or otherwise seek to give effect to, any term of a contract which is unenforceable by virtue of subregulation (1), (3) or (4); or

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(b) otherwise directly or indirectly request a payment to which by virtue of this regulation the temporary work agency is not entitled.

Right to time off for ante-natal care.

17.(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 regulation 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) Subregulation (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 subregulation (1).

(4) For the purposes of this regulation 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.

Right to remuneration for time off under regulation 17.

18.(1) An agency worker who is permitted to take time off under regulation 17 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

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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 12 the total number of the agency worker's normal working hours during the period of 12 weeks ending with the last complete week before the day on which the time off is taken.

(4) A right to any amount under subregulation (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 regulation 17 goes towards discharging any liability of the temporary work agency to pay remuneration under subregulation (1) in respect of that period; and, conversely, any payment of remuneration under subregulation (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.

Complaint to Employment Tribunal on the ground of refusal to permit to take time off, etc.

19.(1) An agency worker may present a complaint to the Employment Tribunal that the temporary work agency−

(a) has unreasonably refused to permit her to take time off as required by regulation 17; or

(b) has failed to pay the whole or any part of any amount to which she is entitled under regulation 18.

(2) An agency worker may present a complaint to the Employment Tribunal that the hirer has unreasonably refused to permit her to take time off as required by regulation 17.

(3) The Tribunal shall not consider a complaint under subregulation (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

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(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 the Employment Tribunal finds a complaint under this regulation 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 regulation 18 if she had not been refused the time off.

(6) Where the Tribunal orders payment under subregulation (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 regulation 18, the Tribunal shall also order the temporary work agency to pay to the agency worker the amount which it finds due to her.

Agency workers: Application of regulations 17 to 19.

20.(1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law, regulations 17 to 19 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 pursuant to regulation 9(a) or (b).

(2) Nothing in those regulations 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.

Right to offer of alternative work.

21.(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.

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(2) For alternative work to be suitable for an agency worker for the purposes of this regulation−

(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) Subregulation (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.

Right to remuneration.

22.(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 regulation 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 regulation 21, 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 regulation imposes a duty on the temporary work agency to pay remuneration beyond the original intended duration, or likely duration, whichever is the

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longer, of the assignment which ended when the supply of the agency worker to the hirer was ended on maternity grounds.

Agency workers: Application of regulations 21 and 22.

23.(1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law, regulations 21 and 22 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 6 pursuant to regulation 9(a) or (b).

(2) Nothing in those regulations 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.

Calculation of remuneration.

24.(1) The amount of remuneration payable by a temporary work agency to an agency worker under regulation 22 is a week's pay in respect of each week for which remuneration is payable in accordance with regulation 22; 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 regulation 22 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 regulation 22 in respect of that period; and, conversely, any payment of remuneration in discharge of a temporary work agency's liability under regulation 22 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 subregulation (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.

Complaints to Employment Tribunals on the ground of refusal to pay remuneration, etc.

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25.(1) An agency worker may present a complaint to the 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 regulation 22.

(2) The Employment Tribunal shall not consider a complaint under subregulation (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 the Employment Tribunal finds a complaint under subregulation (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 the Employment Tribunal that in contravention of regulation 21 the temporary work agency has failed to offer to propose the agency worker to a hirer that has suitable alternative work available.

(5) The Employment Tribunal shall not consider a complaint under subregulation (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 the Employment Tribunal finds a complaint under subregulation (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 regulation 21 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.

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Alteration of working conditions in respect of new or expectant mothers.

26.(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 3(1) of the Protection of Pregnant Workers Regulations 1996 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 subregulations (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.

Certificate from registered medical practitioner in respect of new or expectant mothers.

27. 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.

Notification by new or expectant mothers.

28.(1) Nothing in regulation 26 (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 26(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 26(1) shall require the hirer to maintain action taken in relation to an agency worker–

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(a) in a case−

(i) to which regulation 26(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

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

Agency workers: Application of regulations 26 to 28.

29.(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 26, 27 and 28 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 6 pursuant to regulation 9(a) or (b).

(2) Nothing in regulations 26 or 27 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.

Liability of temporary work agency and hirer.

30.(1) A temporary work agency shall be liable for any breach of regulation 6, to the extent that it is responsible for that breach.

(2) Subject to subregulation (3), the hirer shall be liable for any breach of regulation 6, to the extent that it is responsible for that breach.

(3) A temporary work agency shall not be liable for a breach of regulation 6 where it is established that the temporary work agency−

(a) obtained, or has taken reasonable steps to obtain, relevant information from the hirer about the basic working and employment conditions in force in the hirer;

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(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 9, the agency worker ceases to be entitled to the rights conferred by regulation 6; 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 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 6(3), relevant information in subregulation (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 13 or 14.

(7) In relation to the rights conferred by regulation 33−

(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 or prohibitions.

31.(1) After having consulted social partners, the Minister must, in accordance with any applicable law and in the light of any relevant collective agreement or practice, review the use of any restriction or prohibition on the use of temporary agency work, and in particular he shall verify whether any such restriction or prohibition is justified on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health

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and safety at work or the need to ensure that the labour market functions properly and abuses are prevented.

(2) Where any restriction or prohibition results from a collective agreement, the review referred to in subregulation (1) may, upon the direction of the Minister, be carried out by the social partners who negotiated the agreement.

(3) Subregulations (1) and (2) shall be without prejudice to any legal requirements with regard to registration, licensing, certification, financial guarantees or monitoring of temporary work agencies.

Right to receive information.

32.(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 6, 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 6 is alleged to have taken place; and

(c) where the temporary work agency seeks to rely on regulation 6(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 subregulation (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 subregulation (3) shall, within 28 days of receiving it, provide the agency worker with such a statement.

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(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 13 or 14, 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 14; and

(b) the particulars of the reasons for the treatment of the agency worker in respect of the right conferred by regulation 13 or, as the case may be, regulation 14.

(7) Subregulations (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 6.

(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.

Unfair dismissal and the right not to be subjected to detriment.

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

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

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(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 32 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 paragraph (a).

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

(5) Subregulation (2) does not apply where the detriment in question amounts to a dismissal of an employee within the meaning of the Employment Act.

Complaints to Employment Tribunals on the ground of infringement of rights, etc.

34.(1) In this regulation "respondent" includes the hirer and any temporary work agency.

(2) Subject to regulation 33(5), an agency worker may present a complaint to the Employment Tribunal that a temporary work agency or the hirer has infringed a right conferred on the agency worker by regulation 6, 13, 14 or 33(2).

(3) An agency worker may present a complaint to the Employment Tribunal that a temporary work agency has−

(a) breached a term of the contract of employment described in regulation 11(1)(a); or

(b) breached a duty under regulation 11(1)(b), (c) or (d).

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(4) Subject to subregulation (5), the 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 6, 13 or 33(2) or a breach of a term of the contract described in regulation 11(1)(a) or of a duty under regulation 11(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 14, 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) The Employment 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 subregulation (4)(a)−

(a) where a term in a contract infringes a right conferred by regulation 6, 13 or 33(2) or breaches regulation 11(1), that infringement or breach shall be treated, subject to paragraph (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 6, 13 or 33(2) or 11(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 subregulation (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 the 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;

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(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 the Employment Tribunal orders compensation under subregulation (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 Employment 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 subregulations (12) and (13), where the Employment Tribunal orders compensation under subregulation (8)(b), the amount of the compensation awarded shall be such as the Employment 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 subregulation (13), where the Employment Tribunal orders compensation under subregulation (8)(b), any compensation which relates to an infringement or breach of the rights−

(a) conferred by regulation 6 or 11; or

(b) conferred by regulation 33(2) to the extent that the infringement or breach relates to regulation 6 or 11,

shall not be less than 2 weeks' pay, calculated in accordance with regulation 35.

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(13) Subregulation (12) does not apply where the Employment Tribunal considers that in all the circumstances of the case, taking into account the conduct of the claimant and respondent, 2 weeks' pay is not a just and equitable amount of compensation, and the amount shall be reduced as the Tribunal considers appropriate.

(14) Where the Employment Tribunal finds that regulation 10(4) applies and orders compensation under subregulation (8)(b), the Employment Tribunal may make an additional award of compensation under subregulation 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 Employment Tribunal considers just and equitable having regard to the extent to which it considers each to have been responsible for the fact that regulation 10(4)(a) applies.

(15) Compensation in respect of treating an agency worker in a manner which infringes the right conferred by regulation 6, 13 or 14 or breaches regulation 11(1)(b), (c) or (d), or breaches a term of the contract described in regulation 11(1)(a), shall not include compensation for injury to feelings.

(16) In ascertaining the loss the Employment Tribunal shall apply the same rule concerning the duty of a person to mitigate loss as applies to damages recoverable under the common law.

(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 the Employment Tribunal under subregulation (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 subregulation (8)(b); or

(b) make an order under subregulation (8)(b).

Calculating a week's pay.

35.(1) For the purposes of regulation 34(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

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(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 subregulation, 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 34(2), the 4 week period (or in a case where the assignment was shorter than 4 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 4 week period (or in the case where that assignment was shorter than 4 weeks, that period) ending with the date of the complaint.

Liability of employers and principals.

36.(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.

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