STATUTORY RULES OF NORTHERN IRELAND

2011 No. 350

EMPLOYMENT

THE AGENCY WORKERS REGULATIONS (NORTHERN IRELAND) 2011

Made - - - -	*5th October 2011*
Coming into operation	*5th December 2011*

The Department for Employment and Learning being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to employment rights and duties(**2**), makes these Regulations—

(a) in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and Articles 17(1), (2) and (5), and 55(2) of, and paragraphs 6, 7 and 14(1) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(**3**), ("the 1978 Order"); and

(b) independently of any proposals submitted by the Health and Safety Executive for Northern Ireland under Article 13(1A)(c) of the 1978 Order(**4**).

The Department for Employment and Learning has consulted the Health and Safety Executive for Northern Ireland and such other bodies as appear to the Department to be appropriate, as required by Article 46(1) of the 1978 Order(**5**).

PART 1

General and Interpretation

Citation and commencement

1. These Regulations may be cited as the Agency Workers Regulations (Northern Ireland) 2011 and shall come into operation on 5th December 2011.

(**1**) 1972 c.68
(**2**) *See* The European Communities (Designation) Order 2000 (S.I. 2000/738)
(**3**) S.I. 1978/1039 (N.I.9)
(**4**) Article 13(1A) (c) was inserted by the Health and Safety (Amendment) (Northern Ireland) Order 1998, S.I. 1998/2795 (N.I.18), Article 4(1) and Schedule 1, paragraph 10
(**5**) Article 46(1) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraph 18(1)

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**6**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996(**7**);

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

"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,

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

"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.

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 with the agency to perform work or services personally.

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

(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

(**6**) 1954 c.33 (N.I.)
(**7**) S.I. 1996/1919 (N.I.16)

(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 paragraph (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 paragraph (3) as having been supplied by a temporary work agency shall be treated, for the purposes of paragraph (1)(b), as having a contract with the temporary work agency.

(5) An individual is not prevented from being an agency worker because—

(a) the temporary work agency supplies the individual through one or more intermediaries;

(b) one or more intermediaries supply that individual;

(c) the individual is supplied pursuant to any contract or other arrangement between the temporary work agency, one or more intermediaries and the hirer;

(d) the temporary work agency pays for the services of the individual through one or more intermediaries; or

(e) the individual is employed by or otherwise has a contract with one or more intermediaries.

(6) Paragraph (5) does not prejudice the generality of paragraphs (1) to (4).

The meaning of temporary work agency

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 paragraph (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.

PART 2

Rights

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

5.—(1) Subject to regulation 7, 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.

(2) For the purposes of paragraph (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,

(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) Paragraph (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

(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 paragraph (3) an employee is a comparable employee in relation to an agency worker if at the time when the breach of paragraph (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 sub-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 10.

Relevant terms and conditions

6.—(1) In regulation 5(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 paragraph (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, holiday pay or other emolument referable to the employment, whether payable under contract or otherwise, but excluding any payments or rewards within paragraph (3).

(3) Those payments or rewards 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 time off under Part VII of the 1996 Order(**8**) (payment for time off for carrying out trade union duties etc);

(h) a guarantee payment under Article 60 of the 1996 Order;

(i) any payment by way of an advance under an agreement for a loan or by way of an advance of pay (but without prejudice to the application of Article 45 of the 1996 Order to any deduction made from the worker's wages in respect of any such advance);

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

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

(4) For the purposes of paragraphs (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—

"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;

(**8**) Article 93 of the 1996 Order was amended by Article 31(1) and (3) of the Employment (Northern Ireland) Order 2003, S.I. 2003/2902 (N.I. 15)