

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

PART 1

PRIMARY LEGISLATION

The Industrial Relations (Northern Ireland) Order 1992

1. The Industrial Relations (Northern Ireland) Order 1992(1) is amended as follows.
2. In Article 2(2) (Interpretation), before the entry relating to “agent” insert—
““agency worker” has the meaning given in regulation 3 of the Agency Workers Regulations (Northern Ireland) 2011;”.
3. In Article 39(1) (general duty of employers to disclose information) after “undertaking” insert “(including information relating to use of agency workers in that undertaking)”.

The Trade Union and Labour Relations (Northern Ireland) Order 1995

4. The Trade Union and Labour Relations (Northern Ireland) Order 1995(2) is amended as follows.
5. In Article 2(2) (Interpretation), after the entry relating to “the Agency” insert—
““agency worker” has the meaning given in regulation 3 of the Agency Workers Regulations (Northern Ireland) 2011;”.
6. In Article 44B (collective bargaining: training)—
 - (a) after paragraph (4) insert—
““(4A) If the information mentioned in paragraph (4) includes information relating to the employment situation the employer must (so far as not required by paragraph (4)) also provide at the same time to the trade union the following information—
 - (a) the number of agency workers working temporarily for and under the supervision and direction of the employer,
 - (b) the parts of the employer’s undertaking in which those agency workers are working, and
 - (c) the type of work those agency workers are carrying out.”, and
 - (b) in paragraph (5) after “(4)” insert “or (4A)”.
- 7.—(1) Schedule 1A is amended as follows.
 - (2) In paragraph 7, after sub-paragraph (5), insert—
““(5A) Sub-paragraph (5B) applies to an agency worker whose contract within regulation 3(1)(b) of the Agency Workers Regulations (Northern Ireland) 2011 (contract with the temporary work agency) is not a contract of employment.

(1) S.I. 1992/807 (N.I.5)

(2) S.I. 1995/1980 (N.I.12); Article 44B was inserted by Article 7(1) of the Employment Relations (Northern Ireland) Order 1999, S.I. 1999/2790 (N.I. 9); Schedule 1A was inserted by the Employment Relations (Northern Ireland) Order 1999, Article 3(1) and (3) and Schedule 1

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(5B) For the purposes of sub-paragraphs (1) and (2), the agency worker is to be treated as having a contract of employment with the temporary work agency for the duration of the assignment with the employer (and “assignment” has the same meaning as in those Regulations).”.

(3) In paragraph 99, after sub-paragraph (5), insert—

“(5A) Sub-paragraph (5B) applies to an agency worker whose contract within regulation 3(1)(b) of the Agency Workers Regulations (Northern Ireland) 2011 (contract with the temporary work agency) is not a contract of employment.

(5B) For the purposes of sub-paragraphs (1) and (4), the agency worker is to be treated as having a contract of employment with the temporary work agency for the duration of the assignment with the employer (and “assignment” has the same meaning as in those Regulations).”.

The Employment Rights (Northern Ireland) Order 1996

8. The 1996 Order is amended as follows.

9. In Article 59(1) (supplementary: meaning of “wages” etc), after sub-paragraph (f) insert—

“(fa) remuneration on ending the supply of an agency worker on maternity grounds under Article 100C,”

10. After Article 85 insert—

“Ante-natal care: agency workers

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

85ZA.—(1) An agency worker who—

- (a) is pregnant, and
- (b) has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, 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 Article 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 health visitor stating that the agency worker is pregnant, and
- (b) an appointment card or some other document showing that the appointment has been made.

(3) Paragraph (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 paragraph (1).

(4) For the purposes of this Article the working hours of an agency worker shall be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

(5) In this Article references to a registered health visitor have the same meaning as in Article 83(1)(b).

Right to remuneration for time off under Article 85ZA

85ZB.—(1) An agency worker who is permitted to take time off under Article 85ZA is entitled to be paid remuneration by the temporary work agency for the period of absence at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off is taken.

(3) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken.

(4) A right to any amount under paragraph (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 Article 85ZA goes towards discharging any liability of the temporary work agency to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (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.

Complaints to industrial tribunals: agency workers

85ZC.—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency—

- (a) has unreasonably refused to permit her to take time off as required by Article 85ZA, or
- (b) has failed to pay the whole or any part of any amount to which she is entitled under Article 85ZB.

(2) An agency worker may present a complaint to an industrial tribunal that the hirer has unreasonably refused to permit her to take time off as required by Article 85ZA.

(3) An industrial tribunal shall not consider a complaint under paragraph (1) or (2) unless it is presented—

- (a) before the end of the period of three months beginning with the date of the appointment concerned, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) Where an industrial tribunal finds a complaint under this Article 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

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agency worker of an amount equal to the remuneration to which she would have been entitled under Article 85ZB if she had not been refused the time off.

(6) Where the tribunal orders payment under paragraph (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 Article 85ZB, 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: supplementary

85ZD.—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law Articles 85ZA to 85ZC do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) is no longer entitled to the rights conferred by regulation 5 of the Agency Workers Regulations (Northern Ireland) 2011 pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in those Articles imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration of the assignment, whichever is the longer.

(3) Those Articles do not apply where Articles 85 to 87 apply.

(4) In this Article and Articles 85ZA to 85ZC the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011—

- “agency worker”;
- “assignment”;
- “hirer”;
- “qualifying period”;
- “temporary work agency”.

11. After Article 100 insert—

“Ending the supply of an agency worker on maternity grounds

Meaning of ending the supply of an agency worker on maternity grounds

100A.—(1) For the purposes of this Part the supply of an agency worker to a hirer is ended on maternity grounds if, in consequence of action taken pursuant to a provision listed in paragraph (2), the supply of the agency worker to the hirer is ended on the grounds that she is pregnant, has recently given birth or is breastfeeding a child.

(2) The provisions are—

- (a) regulation 8(3) or 9(2) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997,
- (b) regulation 16A(2) or 17A of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000, or

- (c) regulation 20 of the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005.

Right to offer of alternative work

100B.—(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.

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

- (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) Paragraph (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

100C.—(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 Article 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 Article 100B, 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 Article imposes a duty on the temporary work agency to pay remuneration 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.

Agency workers: supplementary

100D.—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law Articles 100A, 100B and 100C do not apply where the agency worker—

- (a) has not completed the qualifying period, or

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(b) is no longer entitled to the rights conferred by regulation 5 of the Agency Workers Regulations (Northern Ireland) 2011 pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in those Articles imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration of the assignment, whichever is the longer.

(3) Those Articles do not apply where Articles 98 to 100 apply.

(4) In this Article and Articles 100A to 100C the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011—

“agency worker”;

“assignment”;

“hirer”;

“qualifying period”;

“temporary work agency”.”.

12. After Article 101 insert—

“Calculation of remuneration (agency workers)

101A.—(1) The amount of remuneration payable by a temporary work agency to an agency worker under Article 100C is a week’s pay in respect of each week for which remuneration is payable in accordance with Article 100C; 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 Article 100C 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 Article 100C in respect of that period; and, conversely, any payment of remuneration in discharge of a temporary work agency’s liability under Article 100C 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 paragraph (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.

(5) Expressions used in this Article and Articles 100A to 100C have the same meaning as in those Articles (see Article 100D).”.

13. After Article 102 insert—

“Complaints to industrial tribunals: agency workers

102A.—(1) An agency worker may present a complaint to an industrial 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 Article 100C.

(2) An industrial tribunal shall not consider a complaint under paragraph (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 an industrial tribunal finds a complaint under paragraph (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 an industrial tribunal that in contravention of Article 100B the temporary work agency has failed to offer to propose the agency worker to a hirer that has suitable alternative work available.

(5) An industrial tribunal shall not consider a complaint under paragraph (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 an industrial tribunal finds a complaint under paragraph (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 Article 100B 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.

(8) Expressions used in this Article and Articles 100A to 100C have the same meaning as in those Articles (see Article 100D)."

14. In Article 137(3) (redundancy as unfair dismissal) in paragraph (1)(c) (which requires one of a specified group of paragraphs to apply for a person to be treated as unfairly dismissed) for "(7K)" substitute "(7L)" and after paragraph "(7K)" insert—

"(7L) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 17 of the Agency Workers Regulations (Northern Ireland) 2011 (unless the case is one to which paragraph (4) of that regulation applies)."

15. In Article 140(4) (exclusion of right: qualifying period of employment) in paragraph (3) (cases where no qualifying period of employment is required) omit "or" at the end of sub-paragraph (q) and after sub-paragraph (r) insert—

"or

- (s) paragraph (1) of regulation 17 of the Agency Workers Regulations (Northern Ireland) 2011 applies."

(3) Article 137 has been amended on a number of occasions to specify additional circumstances in which an employee dismissed by reason of redundancy is to be regarded as unfairly dismissed

(4) Article 140(3) has been amended on a number of occasions to specify additional cases where the qualifying period does not apply

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16.—(1) Article 216 (duty of employer to consult representatives of employees) is amended as follows.

(2) In paragraph (6) (disclosure for the purposes of consultation), after sub-paragraph (f) add—

- “(g) the number of agency workers working temporarily for and under the supervision and direction of the employer,
- (h) the parts of the employer’s undertaking in which those agency workers are working, and
- (i) the type of work those agency workers are carrying out.”.

(3) After paragraph (12) insert —

“(13) In this Article “agency worker” has the same meaning as in regulation 3 of the Agency Workers Regulations (Northern Ireland) 2011.”

The Industrial Tribunals (Northern Ireland) Order 1996

17. The Industrial Tribunals (Northern Ireland) Order 1996⁽⁵⁾ is amended as follows.

18. In Article 20(1)⁽⁶⁾ (conciliation)—

(a) omit “or” immediately preceding the sub-paragraph inserted by regulation 33 of the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009⁽⁷⁾, and

(b) after sub-paragraph (s), insert—

“, or

(t) arising out of a contravention, or alleged contravention of regulation 5, 12, 13 or 17(2) of the Agency Workers Regulations (Northern Ireland) 2011.”

⁽⁵⁾ [S.I. 1996/1921 \(N.I.18\)](#)

⁽⁶⁾ Article 20(1) has been amended on a number of occasions to specify additional cases under which industrial tribunal proceedings may be brought

⁽⁷⁾ [S.I. 2009/2402](#)