

2020 No. 251

TERMS AND CONDITIONS OF EMPLOYMENT

**The Posted Workers (Agency Workers) Order (Northern Ireland)
2020**

Made - - - - *12th November 2020*

Coming into operation - *13th November 2020*

The Department for the Economy(a) makes the following Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(b) and Article 20(8) of the Industrial Tribunals (Northern Ireland) Order 1996(c) and now vested in it(d).

The Department for the Economy is a Northern Ireland department designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to employment rights and duties(e).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Posted Workers (Agency Workers) Order (Northern Ireland) 2020 and comes into operation on 13th November 2020.

(2) The Interpretation Act (Northern Ireland) 1954(f) applies to this Order as it applies to an Act of the Assembly.

(3) In this Order, a reference to a member State includes an EEA state, and “the 2011 Regulations” means the Agency Workers Regulations (Northern Ireland) 2011(g).

Modifications to the Agency Workers Regulations (Northern Ireland) 2011

2.—(1) The 2011 Regulations are to be read—

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- (a) Formerly the Department of Economic Development; see Article 3(5) of the Departments (Northern Ireland) Order 1999 S.I. 1999/283 (N.I. 1) and section 1(3) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)).
- (b) 1972 c. 68; The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Section 2(2) of the European Communities Act 1972 was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (c) S.I. 1996/1921 (N.I. 18); Article 20(8) was amended by the Employment Act (Northern Ireland) 2016 (c. 15 (N.I.)), section 3.
- (d) The functions of the Department of Economic Development under the Industrial Tribunals (Northern Ireland) Order 1996 were transferred to the Department of Higher and Further Education, Training and Employment by S.R. 1999 No. 481, Article 4(b) and Schedule 2, Part II. The Department of Higher and Further Education, Training and Employment was renamed the Department for Employment and Learning by 2001 c. 15 (N.I.), section 1(1), and following the dissolution of that department by the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)), section 1(10), its functions under the Industrial Tribunals (Northern Ireland) Order 1996 were transferred to the Department for the Economy by S.R. 2016 No. 76, Article 6(1)(c).
- (e) S.I. 2000/738.
- (f) 1954 c. 33 (N.I.).
- (g) S.R. 2011 No. 350.

- (a) As if after regulation 13, (Rights of agency workers in relation to access to employment), there were inserted—

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

13A. A hirer that proposes to post an agency worker for a limited period to carry out work in the territory of a member State in which the agency worker does not normally work, must, within a reasonable time prior to the commencement of the posting, inform the temporary work agency of—

- (a) the member State of the posting; and
 - (b) the date on which the posting will commence.”, and
- (b) in accordance with the further modifications in the rest of this regulation.
- (2) Regulation 2(2) is to be read as if—
- (a) the word “and” at the end of the definition of hirer was omitted; and
 - (b) there were inserted after the definition of hirer—
““posting” means the posting of an agency worker in accordance with regulation 13A; and”.
- (3) Regulation 14(5) is to be read as if for “or 13”, there were substituted “13, or 13A”.
- (4) Regulation 18 is to be read as if—
- (a) after paragraph (3), there were inserted—
“(3A) Subject to paragraph (3B), a temporary work agency may present a complaint to an industrial tribunal that the hirer has failed to comply with regulation 13A.

(3B) Paragraph (3A) does not apply where a temporary work agency has commenced other civil proceedings against the hirer for the recovery of the same or substantially the same loss as would be pursued under paragraph (3A) and those proceedings are continuing.”;
 - (b) in paragraph (4), after sub-paragraph (b), there were inserted—
“(c) in the case of an alleged failure to comply with regulation 13A, with the date that the temporary work agency becomes aware of the posting.”;
 - (c) in paragraph (8), at the beginning of sub-paragraph (c), there were inserted “except in relation to a complaint that a hirer has failed to comply with regulation 13A.”;
 - (d) in paragraph (10)—
 - (i) after “paragraphs”, there were inserted “(11A).”;
 - (ii) in sub-paragraph (b) after “infringement”, there were inserted “or breach.”;
 - (e) in paragraph (11)—
 - (i) at the beginning, for “The” there were substituted “Subject to paragraph (11A), the”;
 - (ii) at the beginning of sub-paragraph (b), there were inserted “except in relation to a complaint of a failure by a hirer to comply with regulation 13A.”;
 - (f) after paragraph (11), there were inserted—
“(11A) In respect of an award of compensation made to a temporary work agency for a breach by a hirer of regulation 13A, the loss shall be limited—
 - (a) to losses arising out of any breach by the temporary work agency of the provisions of national law of a member State relating to the requirements under Article 3(1) of the Posted Workers Directive, including where loss is incurred by the imposition of any EU penalty arising out of such a breach; and
 - (b) to the extent only that the loss sustained is reasonably attributable to a breach by the hirer of regulation 13A.
- (11B) In paragraph (11A)—

“competent authority” means a competent authority designated by a member State for the purposes of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System(a);

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

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

“Posted Workers Directive” means Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services(b), as amended by Directive 2018/957/EU of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services(c).”.

Consequential modifications

3. The Industrial Tribunals (Northern Ireland) Order 1996 is to be read as if in Article 20(1), after sub-paragraph (v)—

- (a) for “.” there were substituted “; or”, and
- (b) there were inserted—

“(w)under regulation 18(3A) of the Agency Workers Regulations (Northern Ireland) 2011 (as those Regulations have effect by virtue of the Posted Workers (Agency Workers) Order (Northern Ireland) 2020).”.

Effect of Articles 2 and 3 after IP completion day and saving provision

4.—(1) Articles 2 and 3 cease to have effect on IP completion day.

(2) Despite paragraph (1), the 2011 Regulations and the Industrial Tribunals (Northern Ireland) Order 1996 continue to have effect after IP completion day as modified by Articles 2 and 3 in relation to cases where a temporary work agency presents or has presented a complaint under regulation 18 of the 2011 Regulations relating to a posting which began before IP completion day.

Sealed with the Official Seal of the Department for the Economy on 12th November 2020.



Colin Jack
A senior officer of the
Department for the Economy

(a) O.J. No. L159, 28.5.2014, p. 11–31.
(b) O.J. No. L18, 21.1.1997, p. 1–6.
(c) O.J. No. L173, 9.7.2018, p. 16–24.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements provisions of Directive 2018/957/EU of the European Parliament and of the Council of 28 June 2018 (OJ L 173, 9.7.2018) amending Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services (OJ 18, 21/01/1997) (“the Directive” and “the Posted Workers Directive” respectively). This Order implements the Directive by modifying the Agency Workers Regulations (Northern Ireland) 2011 (“the 2011 Regulations”). The 2011 Regulations implement Council Directive 2008/104/EC of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p.9) (“the Agency Workers Directive”). The Agency Workers Directive establishes a general framework for protection of temporary agency workers.

Article 2(1) modifies the 2011 Regulations by requiring a hirer that proposes to post an agency worker for a limited period to a member State to inform the temporary work agency of the location and proposed start date of the posting a reasonable time before the posting is due to commence.

Article 2(4) modifies the 2011 Regulations to enable a temporary work agency to bring a claim in the Industrial Tribunal against the hirer to recover any losses the temporary work agency may suffer as a result of a penalty imposed by a member State for failure to comply with the provisions of the Directive or the Posted Workers Directive. It also prevents a temporary work agency from bringing such a claim if it is pursuing such losses through other civil proceedings.

Article 3 modifies the Industrial Tribunals (Northern Ireland) Order 1996 to enable early conciliation of claims brought pursuant to the modified regulations.

Article 4 expires the modifications made to the 2011 Regulations and Industrial Tribunals (Northern Ireland) Order 1996 on IP completion day (the day on which the transition period for withdrawal by the UK from the European Union is complete), and these two enactments revert to the text that was in force in each respectively without the modifications made by Articles 2 and 3. Article 4 also makes a saving provision to allow a temporary work agency to continue to pursue a claim, or conciliate one, after IP completion day, where a breach of regulation 13A of the 2011 Regulations occurs prior to IP completion day.

Copies of a transposition note and the Explanatory Memorandum are available alongside the statutory rule on www.legislation.gov.uk. A full impact assessment has not been produced as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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