

## SCHEDULE 2

### CONSEQUENTIAL AMENDMENTS

#### PART 1

##### PRIMARY LEGISLATION

#### The Trade Union and Labour Relations (Consolidation) Act 1992

1. The Trade Union and Labour Relations (Consolidation) Act 1992 <sup>M1</sup> is amended as follows.

##### Marginal Citations

**M1** 1992 c.52; section 70B was inserted by the [Employment Relations Act 1999 \(c.26\)](#), [section 5](#); section 188 (4) was amended by regulations 3(1) and (3) of [S.I. 1995/2587](#) and the [Trade Union Reform and Employment Rights Act 1993 \(c.19\)](#), [sections 34](#) (1), (2)(a), 51 and Schedule 10; section 298 was amended by the [Employment Relations Act 2004 \(c.24\)](#), [section 50](#) (4), the Employment Rights Act 1996 (c.18 ), section 240 and paragraphs 56 (1) and (19) of Schedule 1 and Article 3.(2) and Schedule 2 of [S.I. 2001/1149](#); section 299 was amended by regs 2 (1), (2) and 7 of [S.I. 1999/1925](#), the Trade Union Reform and Employment Rights Act 1993 (c.19 ), section 49 (2) and paragraph 89 of Schedule 8, reg 7 of [S.I. 1995/2587](#), the Employment Relations Act 2004 (c. ), section 57, paragraph 22 of Schedule 1 and Schedule 2 and Article 3 (2) and Schedule 2 to [S.I. 2001/1149](#); Schedule A1 was inserted by the [Employment Relations Act 1999 \(c. 26\)](#), [sections 1](#) (1), (3) and Schedule 1. There are amendments to Schedule A1 but none are relevant to these Regulations.

2. In section 70B (collective bargaining: training)—

- (a) after subsection (4) insert—

“(4A) If the information mentioned in subsection (4) includes information relating to the employment situation the employer must (so far as not required by subsection (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 subsection (5) after “(4)” insert “ or (4A) ”.

3. In section 181(2) (general duty of employers to disclose information relating to their undertaking) after “undertaking” insert “ (including information relating to use of agency workers in that undertaking) ”.

- 4.—(1) Section 188(4), (disclosure for the purposes of consultation) is amended as follows.

- (2) Omit “and” at the end of paragraph (e).

- (3) After 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

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- (i) the type of work those agency workers are carrying out.”
- 5. In section 298 (minor definitions: general), after the entry relating to “act” and “action” insert—
  - ““agency worker” has the meaning given in regulation 3 of the Agency Workers Regulations 2010;”.
- 6. In section 299 (index of defined expressions), insert in the appropriate place—

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| “agency worker | section 298” |
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- 7.—(1) Schedule A1 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 2010 (contract with the temporary work agency) is not a contract of employment.
  - (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 2010 (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 Tribunals Act 1996**

- 8. The Employment Tribunals Act 1996 <sup>M2</sup> is amended as follows—
  - (a) In section 18(1) <sup>M3</sup> (cases where conciliation provisions apply)—
    - (i) at the end of the paragraph inserted by regulation 33 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 <sup>M4</sup>, omit “or”, and
    - (ii) after paragraph (w), insert—
      - “, or
      - (x) arising out of a contravention, or alleged contravention of regulation 5, 12, 13 or 17(2) of the Agency Workers Regulations 2010.”;
  - (b) In section 21 <sup>M5</sup> (jurisdiction of the Employment Appeal Tribunal) in subsection (1) (which specifies the proceedings and claims to which the section applies)—
    - (i) at the end of paragraph (w), omit “or”, and
    - (ii) after paragraph (x), insert—
      - “, or
      - (y) the Agency Workers Regulations 2010.”.

**Marginal Citations**

- M2** 1996 c.17. Under section 1(1) of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c.8\)](#), the Act, formerly the Industrial Tribunals Act 1996, may now be cited as the Employment Tribunals Act 1996.
- M3** Section 18(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.
- M4** [S.I. 2009/2401](#).
- M5** Section 21 has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

**The Employment Rights Act 1996**

9. The 1996 Act is amended as follows.

10. In section 27(1) <sup>M6</sup> (protection of wages; sums included in “wages”), after paragraph (f) insert—

“(fa) remuneration on ending the supply of an agency worker on maternity grounds under section 68C of this Act.”

**Marginal Citations**

- M6** There are amendments to this section none of which are relevant.

11. After section 57 insert—

*“Ante-natal care: agency workers*

**57ZA Right to time off for ante-natal care (agency workers)**

**57ZA** (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 section 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) Subsection (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 subsection (1). (4) For the purposes of this section 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 section references to a registered nurse have the same meaning as in section 55.

#### **57ZB Right to remuneration for time off under section 57ZA**

**57ZB** (1) An agency worker who is permitted to take time off under section 57ZA 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 subsection (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 section 57ZA goes towards discharging any liability of the temporary work agency to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (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.

#### **57ZC Complaint to employment tribunal: agency workers**

**57ZC** (1) An agency worker may present a complaint to an employment tribunal that the temporary work agency—

- (a) has unreasonably refused to permit her to take time off as required by section 57ZA, or
- (b) has failed to pay the whole or any part of any amount to which she is entitled under section 57ZB.

(2) An agency worker may present a complaint to an employment tribunal that the hirer has unreasonably refused to permit her to take time off as required by section 57ZA. (3) An employment tribunal shall not consider a complaint under subsection (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 employment tribunal finds a complaint under this section 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 section 57ZB if she had not been refused the time off. (6) Where the tribunal orders payment under subsection (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 section 57ZB, the tribunal shall also order the temporary work agency to pay to the agency worker the amount which it finds due to her.

#### **57ZD Agency workers: supplementary**

**57ZD** (1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law sections 57ZA to 57ZC 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 2010 pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in those sections 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 sections do not apply where sections 55 to 57 apply. (4) In this section and sections 57ZA to 57ZC the following have the same meaning as in the Agency Workers Regulations 2010—

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

#### **12. After section 68 insert—**

*“Ending the supply of an agency worker on maternity grounds*

#### **68A Meaning of ending the supply of an agency worker on maternity grounds**

**68A** (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 subsection (2), the supply of the agency worker to the hirer is ended on the ground that she is pregnant, has recently given birth or is breastfeeding a child. (2) The provisions are—

- (a) regulations 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 1999; or
- (c) regulation 20 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

#### **68B Right to offer of alternative work**

**68B** (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 section—

- (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

*Changes to legislation: There are currently no known outstanding effects for the Agency Workers Regulations 2010, PART 1. (See end of Document for details)*

- (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) Subsection (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.

### **68C Right to remuneration**

**68C** (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 section 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 section 68B, 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 section 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.

### **68D Agency workers: supplementary**

**68D** (1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law sections 68A, 68B and 68C 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 2010 pursuant to regulation 8(a) or (b) of those Regulations.

(2) Nothing in those sections 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 sections do not apply where sections 66 to 68 apply. (4) In this section and sections 68A to 68C the following have the same meaning as in the Agency Workers Regulations 2010—

- “agency worker”
- “assignment”;
- “hirer”;
- “qualifying period”;

“temporary work agency”.”.

13. After section 69 insert—

**“69A Calculation of remuneration (agency workers)**

**69A** (1) The amount of remuneration payable by a temporary work agency to an agency worker under section 68C is a week's pay in respect of each week for which remuneration is payable in accordance with section 68C; 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 section 68C 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 section 68C in respect of that period; and, conversely, any payment of remuneration in discharge of a temporary work agency's liability under section 68C 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 subsection (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 section and sections 68A to 68C have the same meaning as in those sections (see section 68D).”.

14. After section 70 insert—

**“70A Complaints to employment tribunals: agency workers**

**70A** (1) An agency worker may present a complaint to an 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 section 68C. (2) An employment tribunal shall not consider a complaint under subsection (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 employment tribunal finds a complaint under subsection (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 employment tribunal that in contravention of section 68B the temporary work agency has failed to offer to propose the agency worker to a hirer that has suitable alternative work available. (5) An employment tribunal shall not consider a complaint under subsection (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.

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(6) Where an employment tribunal finds a complaint under subsection (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 section 68B 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 section and sections 68A to 68C have the same meaning as in those sections (see section 68D).”.

**15.** In section 105<sup>M7</sup> (redundancy as unfair dismissal) in subsection (1)(c) (which requires one of a specified group of subsections to apply for a person to be treated as unfairly dismissed) for “(7M)” substitute “(7N)” and after subsection 7M insert—

“(7N) This subsection 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 2010 (unless the case is one to which paragraph (4) of that regulation applies).”.

#### Marginal Citations

**M7** Section 105 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.

**16.** In section 108<sup>M8</sup> (exclusion of right: qualifying period of employment) in subsection (3) cases where no qualifying period of employment is required) omit “or” at the end of [F1]paragraph (p)] and [F2]after paragraph (q)] insert—

“or

[F3(r)] paragraph (1) of regulation 17 of the Agency Workers Regulations 2010 applies.”

**F1** Words in Sch. 2 para. 16 substituted (1.9.2011) by [The Agency Workers \(Amendment\) Regulations 2011 \(S.I. 2011/941\)](#), [regs. 1, 2\(5\)\(a\)](#)

**F2** Words in Sch. 2 para. 16 substituted (1.9.2011) by [The Agency Workers \(Amendment\) Regulations 2011 \(S.I. 2011/941\)](#), [regs. 1, 2\(5\)\(b\)](#)

**F3** Word in Sch. 2 para. 16 substituted (1.9.2011) by [The Agency Workers \(Amendment\) Regulations 2011 \(S.I. 2011/941\)](#), [regs. 1, 2\(5\)\(c\)](#)

#### Marginal Citations

**M8** Section 108(3) has been amended on a number of occasions to specify additional cases where the qualifying period does not apply.



**Changes to legislation:**

There are currently no known outstanding effects for the The Agency Workers Regulations 2010, PART 1.