

Employment and Workers' Rights Bill

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Make provision about employment conditions and workers' rights; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Removal of equal pay exemption

- (1) The Agency Workers Regulations 2010 (S.I. 2010/93) are amended in accordance with subsections (2) to (6).
- (2) Regulation 10 (Permanent contracts providing for pay between assignments) is revoked. 5
- (3) In regulation 5 (Rights of agency workers in relation to the basic working and employment conditions), leave out paragraph (6).
- (4) In paragraph (4) of regulation 7 (Qualifying period), leave out “and regulation 10”.
- (5) Regulation 11 (Calculating the minimum amount of pay) is revoked. 10
- (6) In Regulation 18 (Complaints to employment tribunals etc) –
 - (a) leave out paragraph (3);
 - (b) in paragraph (4)(a), leave out “or a breach of a term of the contract described in regulation 10(1)(a) or of a duty under regulation 10(1)(b), (c) or (d)”;
 - (c) in paragraph (6)(a), leave out “or breaches regulation 10(1)”;
 - (d) in paragraph (15), leave out “or breaches regulation 10(1)(b), (c) or (d), or breaches a term of the contract described in regulation 10(1)(a)”.15
- (7) The amendments made by subsection (6) shall not affect –
 - (a) the right of an agency worker to present a complaint to an employment tribunal in respect of the breach of a duty under regulation 10 of the Agency Worker Regulations 2010 or the term of a contract of employment described in that regulation, or
 - (b) the power of an employment tribunal to hear such a complaint.20

- (8) This subsection applies to a statement in a contract of employment 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 5 of the Agency Worker Regulations 2010 insofar as they relate to pay.
- (9) No statement to which subsection (8) applies shall be of any legal effect after the coming into force of subsection (2). 5
- (10) No power of a Minister of the Crown to make regulations may be exercised to –
- (a) reverse the effect of subsection (2) after its coming into force, or
 - (b) otherwise limit the entitlement to equal pay of agency workers as provided for in the Agency Worker Regulations 2010 as amended by this section. 10

2 Right not to be unfairly dismissed by hirer

- (1) An agency worker has the right not to be unfairly dismissed by a hirer under whose supervision and direction the agency worker is temporarily working.
- (2) Section 94 of the Employment Rights Act 1996 is amended in accordance with subsections (3) and (4). 15
- (3) After subsection (1), insert:
- “(1A) For the purposes of this Part, references to an employer shall be read to include a hirer, and reference to an employee shall be read to include an agency worker.” 20
- (4) After subsection (2), insert:
- “(3) References in this Part to “agency worker”, “assignment”, and “hirer” have the same meaning as in the Agency Workers Regulations 2010.”
- (5) In addition to the rights under the Employment Rights Act 1996 (as amended by this Act), an agency worker shall be considered unfairly dismissed for the purposes of subsection (1) where dismissed on the grounds set out in subsection (6). 25
- (6) The grounds referred to in subsection (5) are where –
- (a) an agency worker –
 - (i) brought proceedings against a hirer under this Act; 30
 - (ii) applied to a hirer for a contract of employment or written statement under this Act;
 - (iii) provided evidence or information under this Act;
 - (iv) alleged that the hirer or temporary work agency infringed any of the provisions under this Act; 35
 - (v) refused (or proposed to refuse) a right conferred by this Act; or
 - (vi) declined to sign a workforce agreement for the purposes of this Act; or
 - (b) an agency worker is a –
 - (i) representative of members of the workforce; 40
 - (ii) a candidate in an election in which any person elected will, on being elected, become such a representative, performed (or proposed to perform) any functions or activities as such a representative or candidate; or

- (c) the hirer or temporary work agency believes or suspects that the agency worker has done or intends to do any of the things mentioned in sub paragraphs (a) or (b).
- (7) Subsection (6) does not apply where the allegation made by the agency worker is false and not made in good faith. 5
- (8) Section 95 of the Employment Rights Act 1996 is amended in accordance with subsection (9).
- (9) After subsection (2), insert:
- “(3) For the purposes of this Part, an agency worker is dismissed by the hirer if that worker’s assignment is terminated by the hirer, or if the agency worker terminates the assignment by reason of the hirer’s conduct.” 10
- (10) Nothing in this section shall affect the rights of agency workers under Regulation 17 of the Agency Workers Regulations 2010.
- 3 Right to apply for contract of employment 15**
- (1) An agency worker may apply to a hirer for a contract of employment with the hirer.
- (2) An application under subsection (1) may only be made to a hirer under whose direction the agency worker –
- (a) is temporarily working; or 20
- (b) had been working in the period of up to one month before the application was made.
- (3) An application under subsection (1) must state that it is such an application.
- (4) A hirer to whom an application under subsection (1) is made must –
- (a) consider the application in a reasonable manner; 25
- (b) provide the agency worker with a decision on the application within –
- (i) three months of receiving the application; or
- (ii) such other time as is agreed between the agency worker and hirer; and
- (c) provide written reasons for the decision. 30
- 4 Duty to assess right to contract of employment**
- (1) A hirer has a duty to assess whether an agency worker working temporarily for and under the supervision and direction of the hirer has a right to a contract of employment.
- (2) The duty in subsection (1) applies where an agency worker has been under the continuous supervision and direction of the hirer – 35
- (a) or a continuous period of 12 weeks; or
- (b) for a total period of six months in the preceding twelve months.
- (3) For the avoidance of doubt, once a duty to assess under subsection (1) has arisen it continues to apply even in circumstances where the agency worker is no longer working temporarily for and under the supervision and direction of the hirer. 40

- (4) A hirer under a duty to make the assessment referred to in subsection (1) must –
- (a) undertake the assessment in a reasonable manner;
 - (b) meet with the agency worker who requests the meeting;
 - (c) provide the agency worker with a decision on the application within –
 - (i) one month of the duty becoming applicable under subsection (2); or
 - (ii) such other time as is agreed between the agency worker and hirer; and
 - (d) provide written reasons for the outcome of the assessment.
- (5) An agency worker has the right to be accompanied to any meeting under subsection (3)(b).
- (6) The provisions of section 10 the Employment Relations Act 1999 apply to meetings under subsection (4)(b).
- 5 Entitlement to contract of employment**
- (1) A hirer who –
- (a) has received an application for a contract of employment under section 3(1),
 - (b) is under a duty to assess the right to a contract of employment under section 4(1),
 - (c) has been supervising or directing the work of the same agency worker for a continuous period of two years,
- may only refuse a contract of employment where the work carried out by the agency worker is of a short term nature.
- (2) In determining whether the work carried out by an agency worker is of a short term nature for the purposes of subsection (1), the hirer must have regard to –
- (a) the length of continuous time which the agency worker has been under the supervision and direction of the hirer;
 - (b) the length of time which the agency worker has had periods of being under the supervision and direction of the hirer;
 - (c) the length of gaps between periods when the agency worker has been under the supervision and direction of the hirer; and
 - (d) whether there is a reasonable probability that the work carried out by the agency worker will be of an ongoing nature.
- (3) The Secretary of State may by regulations made by statutory instrument make further provision for conditions which a hirer must have regard to when determining whether an agency worker is carrying out work of a short term nature for the purposes of subsection (1).
- (4) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Where subsection (1)(c) applies, a collective agreement or workforce agreement may modify the application of subsection (2) or regulations made under subsection (3) by specifying –
- (a) the maximum total period for which agency workers may be continuously assigned,

- (b) the maximum number of successive assignments and renewals of such assignments under which agency workers may be assigned to the hirer, or
- (c) objective grounds justifying the use of continuous assignments.

6 Complaints to an employment tribunal 5

- (1) An agency worker who makes an application under section 3(1), is subject to a duty of assessment under section 4(1), or to whom section 5(1)(c) applies may present a complaint to an employment tribunal that –
 - (a) the hirer has not complied with the requirements in section 3(4);
 - (b) the hirer has not complied with the requirements in section 4(3); 10
 - (c) the hirer has failed to take into account the factors under section 5(2) or the regulations under section 5(3); or
 - (d) the conclusion by the hirer that the work is of short term nature was based on incorrect facts.
- (2) An employment tribunal shall not consider a complaint under this section unless it is presented –
 - (a) within three months of the agency worker having received the decision under section 3(6) or the outcome of assessment under section 4(4); 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. 15

7 Right to written statement 20

- (1) If an agency worker (“A”) who considers that, by virtue of section 5, A is a permanent employee, requests in writing from A’s hirer a written statement confirming that A is no longer an agency worker on assignment or that A is now a permanent employee, A is entitled to be provided, within 21 days of A’s request, with either –
 - (a) such a statement, or
 - (b) a statement giving reasons why A remains an agency worker on assignment. 25
- (2) If the reasons stated under paragraph (1)(b) include an assertion that there were objective grounds for A to be on assignment and not a permanent employee of the hirer, the statement shall include a statement of those grounds.
- (3) A written statement under this section is admissible as evidence in any proceedings before a court, an employment tribunal and Her Majesty’s Revenue and Customs. 30
- (4) If it appears to the court or tribunal in any proceedings –
 - (a) that the hirer deliberately, and without reasonable excuse, omitted to provide a written statement, or
 - (b) that the written statement is evasive or equivocal, 35
 it may draw any inference which it considers it just and equitable to draw. 40
- (5) An agency worker who considers that, by virtue of section 3, they are a permanent employee of the hirer may present an application to an employment tribunal for a declaration to that effect.
- (6) No application may be made under subsection (5) unless – 45

- (a) the agency worker in question has previously requested a statement under subsection (1) and the hirer has either failed to provide a statement or given a statement of reasons under subsection (1)(b), and
- (b) the agency worker at the time of the application is assigned to the hirer.

8 Interpretation 5

- (1) In this Act the following have the same meaning as in the Agency Workers Regulations 2010 (S.I. 2010/93)—
 - “agency worker”;
 - “assignment;
 - “contract of employment”;
 - “employer”; and
 - “hirer”.10
- (2) The provisions of Chapter 1 of Part 14 of the Employment Rights Act 1996 apply for the purpose of calculating periods of supervision and direction by the hirer under this Act as they apply for the purposes of calculating periods of employment under that Act. 15

9 Extent, commencement and short title

- (1) This Act extends to England and Wales, and Scotland.
- (2) This Act comes into force three months after the day on which it is passed.
- (3) This Act may be cited as the Employment and Workers' Rights Act 2018. 20

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To make provision about employment conditions and workers' rights; and for connected purposes.

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