

Draft guidance on the Agency Workers Regulations 2010 (SI 2010/93) published

The [Department for Business Innovation and Skills](#) (“BIS”) has published draft guidance on the Agency Workers Regulations 2010 [SI 2010/93](#), which are due to take effect on 1 October 2011 - giving agency workers the [entitlement](#) to the same or no less favourable treatment with respect to basic [employment](#) and [working conditions](#), if and when they complete a qualifying period of 12 weeks in a particular job.

The draft guidance explains that the Agency Workers Regulations apply to:

- individuals who work as temporary agency workers;
- individuals or companies (private, public and third sector) involved in the supply of temporary agency workers, either directly or indirectly, to work temporarily for and under the direction and supervision of a hirer;
- and hirers (private, public and third sector)

The draft guidance explains who are likely to be outside the scope of the regulation, such as:

- individuals who find work through a temporary [work agency](#) but are in [business on their own account](#);
- individuals working on [Managed Service Contracts](#) where the worker does not work under the direction and supervision of the host organisation;
- individuals working for [in-house temporary staffing banks](#) where a company employs its [temporary workers](#) directly (and they only work for that same business or service);
- individuals who find [direct employment](#) with an employer through an “employment agency” ;
- individuals on [secondment or loan](#) from one organisation to another

The draft guidance emphasises that the definition of an [agency worker](#) excludes those who are in *business on their own account* where the hirer is a client or customer of the individual (i.e. a genuine business to business relationship). Simply putting earnings through a limited company would not in itself put individuals beyond the possible scope of the Regulations.

New entitlements

Day 1 rights for all agency workers

The regulations provide new entitlements giving agency workers the same access to certain facilities provided by the hirer and information on job vacancies as comparable permanent workers and employees from the first day of their assignment.

- **access to facilities**; such as the staff canteen, transport facilities, car parking and child-care facilities;
- **access to vacancies**; the right to be notified of any job vacancies within the hirer.

The draft guidance explains that is not a right to special treatment, such as, if a crèche is full and any permanent recruit has to go on a waiting list, this will also apply to the agency worker. Similarly, this could happen with car park spaces (refer to Day 1 entitlements).

After 12 weeks in the same job

These added new equal treatment entitlements relate to ‘relevant terms and conditions’, namely pay and other basic working conditions and will only come the same hirer, in the same role (refer to information required). They are:

- pay related to work undertaken on assignment
- duration of working time
- night work
- rest periods
- rest breaks
- annual leave
- paid time off for ante natal appointments

Click [here](#) for a complete copy of the draft guidance. BIS is hoping to receive feedback by 15 April (which is fiercely ambitious). I hope to give a full review at the end of April.

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