Temporary Agency Workers

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This note provides general background on the European *Agency Workers Directive*.

In October 2008, after years of negotiation, *Directive 2008/104/EC on temporary agency work* was passed by the European Parliament, then signed into law on 19 November 2008 and now awaits domestic implementation, required by December 2011.[1]

The Government initially announced that it intended to implement this in the 2008-09 session of Parliament:

> There will be a detailed consultation in 2009 with interested parties on the options for UK implementation of the Directive and, in the light of responses, a date for entry into force of the regulations. BERR will have particular regard to avoiding unnecessary administrative burdens for business while ensuring agency workers receive the appropriate protections. The Government hopes to introduce the necessary legislation in the current Parliamentary session.[2]

Subsequently, the most recent consultation document published in October 2009 indicated that the regulations will come into force on 1 October 2011.[3] Draft regulations were laid on 21 January 2010, coming into force 1 October 2011, and are expected to pass before the end of the current Parliament.[4]

Primary legislation is not required for the implementation of EU directives. The *Agency Workers Directive* will be implemented by regulations under powers conferred by section 2(2) of the *European Communities Act 1972*.

It is important to note that this will not change the *employment status* of agency workers. It remains the case that an agency worker might find themselves excluded from statutory employment protection rights on grounds that they are not classed as an "employee".

1 *Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work*
2 BERR, *DIRECTIVE 2008/104/EC ON TEMPORARY AGENCY WORK (The "AGENCY WORKERS DIRECTIVE - AWD")* (retrieved 13 March 2009)
3 BIS, *Implementation of the Agency Workers Directive: consultation on draft regulations*, October 2009
4 BIS press release, *Fairness for Agency Workers, Flexibility for Employers*, 21 January 2010

Contents

1 Consultation documents and web pages

BIS, DIRECTIVE 2008/104/EC ON TEMPORARY AGENCY WORK (The "AGENCY WORKERS DIRECTIVE - AWD")

BIS, Employment Agencies: Implementation of the Agency Workers Directive: A Consultation on draft regulations

BIS, Consultation on implementation of the EU Agency worker directive

BERR, *Employment agencies: Implementation of the Agency Workers Directive: a consultation paper*, May 2009

Pat McFadden's Written Statement in Hansard of 8 May 2009 announcing the consultation

BERR Press Release, *Boost for agency workers' rights*, 8 May 2009

BIS, *Agency Workers Directive consultation: summary of responses to consultation*, October 2009

BIS, *Implementation of the Agency Workers Directive: consultation on draft regulations*, October 2009

BIS, *Implementation of the Agency Workers Directive: response to consultation on draft regulations*, 21 January 2010

They were considered by the House of Lords Merits of Statutory Instruments Committee in its 9th report of this session, but the Committee said that the special attention of the House need not be drawn to them:

> AGENCY WORKERS REGULATIONS 2010 (SI 2010/93)

18. This instrument implements an EU Directive on temporary agency work, the aim of which is to ensure the protection of temporary agency workers by applying the principle of equal treatment. The implementation will include a provision based on agreement between the Confederation of British Industry (CBI) and the Trades Union Congress (TUC), that agency workers should receive equal treatment on basic working and employment conditions after 12 weeks in a given job. The Regulations will have a significant impact: the Explanatory Memorandum (EM) says that the agency sector includes about 5% of the UK workforce, supplied through about 16,000 agencies (paragraph 7.1), and estimates used by the Department for Business, Innovation and Skills[8] suggest approximately 45% of agency workers will reach the qualifying period. The Regulations include provisions aimed at preventing misuse of the qualifying period by employers. The annual costs to businesses will be up to £1,516 million (see EM paragraph 10.1). The Regulations will not come into force until 1 October 2011 to provide all concerned with time to prepare for the change, and the application of the Directive, including the operation of the 12 week qualifying period, will be reviewed by December 2013. The Committee received a letter from the British Medical Association making a number of points about the Regulations (see Appendix 4).

The regulations have yet to be considered by the Commons.

2 Background

There have been ongoing calls for agency workers to have the right to equal treatment in comparison with permanent employees in the end user organisation. The European Commission published its original *Proposal for a directive of the European Parliament and Council on working conditions for temporary workers* (COM(2002)149) on 20 March 2002. For many years Member States failed to reach agreement about the draft directive in the European Council of Ministers.[5] Since December 2002 the proposal had been deadlocked in the Council, until 9 June 2008 when a breakthrough was achieved. It was considered under the co-decision procedure which involves the European Parliament and is subject to qualified majority voting in the Council of Ministers. The UK had maintained a blocking minority for many years which appears to have collapsed in December 2007.

The Directive was finally passed on 22 October 2008. The Commission's PreLex database sets out a chronology of the progress of the proposals together with links to relevant documents.[6] The following is a summary of this with some additions:

May 2000	Social Partners begin negotiations on a possible framework agreement
May 2001	Negotiations break down without agreement
20 March 2002	Adoption by Commission
21 March 2002	Transmission to Council and European Parliament
19 September 2002	Opinion of the Employment and Social Affairs Committee (the Committee of the European Parliament charged with looking at the directive)
21 November 2002	Employment and Social Affairs Committee recommendations voted on and passed by the European Parliament at first reading of the proposals
21 November 2002	Commission position on EP amendments on first reading

[5] The Council is made up of the ministers of the Member States. It meets in nine different configurations depending on the subjects under discussion. The Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) is composed of employment, social protection, consumer protection, health and equal opportunities ministers.

[6] The European Commission, PreLex: Amended proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on temporary work

28 November 2002	Commission adopts amended proposal and transmits this to the European Parliament and the Council
3 December 2002	Discussions at Council
6 March 2003	Discussions at Council
3 June 2003	Discussions at Council
4 October 2004	Discussions at Council
2005	Throughout the UK Presidency the proposals are overshadowed by the debate on the Working Time Directive. The Austrian Presidency states that it intends to reopen discussions but this does not take place.
5 December 2007	Discussions at Council.
9 June 2008	Agreement in Council on a common position
22 October 2008	European Parliament approval without amendment

A key point of disagreement in the protracted negotiations was the qualification period. The draft Directive proposed six weeks subject to agreement for a longer period between social partners.

At the meeting on 5 December 2007, under the Portuguese Presidency, it became clear that the UK had lost its blocking minority on the proposal. The reasons for this are complex and are related to a separate issue concerning the working time opt-out provisions which the UK has been struggling to retain. The Portuguese Presidency proposed that these separate matters be considered together in light of the deadlock. There was also domestic pressure for agency workers rights, including Andrew Miller's Private Members Bill, which precipitated an agreement between the TUC and the CBI. This agreement provided that agency workers would get the right to equal treatment with permanent employees in the end user after a period of 12 weeks.

At the subsequent meeting of the European Council on 9 June 2008 agreement was reached on a common position. This required amendments to ensure that the UK national-level agreement between the TUC and CBI would allow derogation from the "day one" rights provided for in the draft directive. The directive was subsequently passed by the European Parliament.

3 The Directive

The Directive applies to: "workers with a contract of employment or employment relationship with a temporary work agency who are assigned to user undertakings to work temporarily under their supervision and direction." It contains the following broad provisions concerning the enforcement of the obligations.[7]

The preamble states:

> (21) Member States should provide for administrative or judicial procedures to safeguard temporary agency workers' rights and should provide for effective, dissuasive and proportionate penalties for breaches of the obligations laid down in this Directive.

Article 5 contains the principle of equal treatment:

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7 EU Council (EPSCO), *Amended proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers - Political agreement on a common position*, 11 June 2008 (ref: 15098/02 SOC 576 CODEC 1588 – COM(2002) 701 final)

> 1. The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.

Article 9(2) sets out minimum requirements:

> 2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This is without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are respected.

Article 10 deals with penalties in the following terms:

> 1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by temporary work agencies or user undertakings. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.
>
> 2. Member States shall lay down rules on penalties applicable in the event of infringements of national provisions implementing this Directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by 5 December 2011. Member States shall notify to the Commission any subsequent amendments to those provisions in good time. They shall, in particular, ensure that workers and/or their representatives have adequate means of enforcing the obligations under this Directive.

The text does not go into detail about the particular measures that might be enacted to prevent employers avoiding their obligations by restricting temporary contracts to a period less than the qualifying period for equal treatment rights to commence. Since the rights would begin on “day-one” unless the derogation for collective agreements (or “national level agreements”) applies, it is necessary to look at the national level agreement between the TUC and CBI (quoted in full below). This has the following clause which contains a commitment to:

> (iii) appropriate anti-avoidance measures reflecting Art 9 (2), in particular relating to the treatment of repeat contracts for the same worker and the position of workers with permanent contracts of employment with agencies who continue to be paid between assignments; it is not intended that article 5 (2) will be used to evade the aims of the Directive.

Article 5(2) states:

> 2. As regards pay, Member States may, after consulting the social partners, provide that an exemption be made to the principle established in paragraph 1 where temporary agency workers who have a permanent contract of employment with a temporary-work agency continue to be paid in the time between assignments.

In order to ensure that the TUC-CBI agreement would be covered by the Directive the UK negotiated a special form of wording to cover “national level agreements”. This is contained in Article 5(4) of the final Directive:

> 4. Provided that an adequate level of protection is provided for temporary agency workers, Member States in which there is either no system in law for declaring collective agreements universally applicable or no such system in law or practice for extending their provisions to all similar undertakings in a certain sector or geographical area, may, after consulting the social partners at national level and on the basis of an agreement concluded by them, establish arrangements concerning the basic working and employment conditions which derogate from the principle established in paragraph 1. Such arrangements may include a qualifying period for equal treatment.
>
> The arrangements referred to in this paragraph shall be in conformity with Community legislation and shall be sufficiently precise and accessible to allow the sectors and firms concerned to identify and comply with their obligations. In particular, Member States shall specify, in application of Article 3(2), whether occupational social security schemes, including pension, sick pay or financial participation schemes are included in the basic working and employment conditions referred to in paragraph 1. Such arrangements shall also be without prejudice to agreements at national, regional, local or sectoral level that are no less favourable to workers.

4 Government position during negotiations

The Government opposed the draft directive on various grounds for some years. In January 2003 the Government set out its reservations concerning the proposed directive in submissions to Europe by the DTI (now the Department for Business, Innovation and Skills):

> The Government believes that temporary agency workers deserve adequate protections, which is why the national minimum wage and working time legislation make specific provisions to cover them. Agency work can provide a useful way in to the labour market for workers. It can increase labour market flexibility in ways which benefit both business and workers. It can also offer workers who want to control or vary their patterns of work greater choice than permanent work. The Government can support a directive which would achieve these aims.
>
> However, the Government remains concerned that the Directive risks decreasing the attractiveness of agency workers to user companies, which might reduce the number of jobs available. It is necessary that the Directive is suitably flexible to accommodate UK practices.[8]

This basic position remained largely unchanged in subsequent stages of the negotiations. Given the fact that the draft directive was proposed by the Commission in March 2002, questions were raised as to why it had failed to make progress and whether the Government's position was in reality opposed in principle. Pat McFadden MP, Minister of State at the Department for Business, Enterprise and Regulatory Reform, gave evidence to the European Scrutiny Committee on Wednesday 11 July 2007 on the draft directive.[9] The key issues in the negotiations at EU level at that time were set out by him as follows:

> There are probably three main areas of the Directive that might be contentious or subject to discussion among Member States. The first would be around the relationship between the Directive and the issue of equal treatment and collective agreements, because from the UK's point of view, if we reach agreement on an equal treatment for an agency workers' directive, we would want it to properly apply to agency workers across Europe. There are some Member States that have, on the face of it, regimes of equal treatment for agency workers, but in practice there are internal collective agreements, which mean that things are not always what they

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8 Explanatory Memorandum on European Community Legislation; Ammended Proposal for a Directive on Temporary Work [15098/02 COM(02)701]. Submitted by the Department of Trade and Industry on 10 January 2003.

9 Oral evidence taken before the European Scrutiny Committee on Wednesday 11 July 2007

> seem. Sometimes agency workers, because of collective agreements, may be paid less than other workers, or it may be to do with qualifying periods. It may sometimes be a regime of not equal treatment, which is indefinite. That is one of the issues around collective agreements and how they would apply. The second area is liberalisation because if we have a regime where agency work is accepted as a legitimate part of the economy—and we believe that it is -there should be equal access for reputable agencies to labour markets and to work in other Member States, and that is an important provision in the Directive. I gather that some other Member States have issues with this liberalisation and equal access. The third issue relates to whether there should be a qualifying period and, if so, how long. Different Member States take different views on that. If we can reach agreement on those three areas, I would be very optimistic.

He restated the Government's commitment to progress the proposals at the next meeting of ministers under the Portuguese Presidency:

> [The Government] wants to reach agreement on the Directive. We support it in principle and we have said that for some time now. We believe there is a strong argument for the principles of equal treatment, but we do want these three issues I mentioned to be resolved. Those are the liberalisation, the impact on workers covered by collective agreements in other Member States, and the qualifying period. If we can resolve those, I would be hopeful of progress. Our position, in short, is that we support the principle of a Directive on agency workers, but that is not a blank cheque. We want to reach the right agreement and get the right Directive.

5 Andrew Miller's Private Members Bill 2007-08

A Private Members Bill on agency workers rights was introduced by Andrew Miller MP who came third in the ballot. It received Second Reading on 22 February 2008.[10] The Bill proposed that an individual agency worker should be entitled to the same basic working and employment conditions as a comparable direct worker. The provisions followed EU Commission proposals produced in 2002 for an EC Directive. It received substantial support from Labour backbenchers and passed on to Committee. It was withdrawn on 21 May, when it had achieved its objective in persuading the Government to reach a settlement between the TUC and CBI that was subsequently embodied in agreements at EU level.

For background see Library research paper: RP 08/17 *Temporary and Agency Workers (Equal Treatment) Bill 2007-08*, Bill 27 of 2007-08

6 TUC – CBI "national level agreement"

Andrew Miller's Bill was debated at Second Reading on 22 February 2008 and in Pubic Bill Committee on 7, 14, and 21 May when it was withdrawn in light of an agreement between the TUC and CBI in the following terms:

> **AGENCY WORKERS: JOINT DECLARATION BY GOVERNMENT, THE CBI AND THE TUC**
>
> The CBI and TUC have reached agreement on how fairer treatment for agency workers in the United Kingdom should be promoted, while not removing the important flexibility that agency work can offer both employers and workers. Agreement has been reached on the following points.
>
> (a) After 12 weeks in a given job there will be an entitlement to equal treatment.

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10 *Temporary and Agency Workers (Equal Treatment) Bill 2007-08*

(b) Equal treatment will be defined to mean at least the basic working and employment conditions that would apply to the workers concerned if they had been recruited directly by that undertaking to occupy the same job. It will not cover occupational social security schemes.

(c) The Government will consult the social partners regarding the implementation of the Directive more generally, in particular:

(i) mechanisms for resolving disputes regarding the definition of equal treatment and compliance with the new rules that avoid undue delays for workers and unnecessary administrative burdens for business;

(ii) appropriate arrangements to enable the two sides of industry and also public services to reach appropriate agreements on the treatment of agency workers, while respecting the overall protection of agency workers; and

(iii) appropriate anti-avoidance measures reflecting Art 9 (2), in particular relating to the treatment of repeat contracts for the same worker and the position of workers with permanent contracts of employment with agencies who continue to be paid between assignments; it is not intended that article 5 (2) will be used to evade the aims of the Directive.

(d) The new arrangements will be reviewed at an appropriate point in the light of experience.

The Government will now engage with its European partners to seek agreement on the terms of the Agency Workers Directive that will enable this agreement to be brought into legal effect in the United Kingdom. The Government hopes that EU agreement will be obtained in time for the necessary UK implementing legislation to be introduced in the next parliamentary session.

Signed [BERR Minister, CBI and TUC] 20 May 2008

7 EU level negotiations

The European Council is made up of the ministers of the Member States. It meets in nine different configurations depending on the subjects under discussion. The Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) is composed of employment, social protection, consumer protection, health and equal opportunities ministers, who meet around four times a year. Since this is subject to qualified majority voting in the Council, opposition depended on support from other Member States which by the December 2007 meeting of EPSCO had dwindled.

As the EPSCO press release following the December 2007 meeting reveals, there was intense pressure in the Council to resolve this deadlock.[11] The reasons for this are complex and intimately related to a separate but parallel matter under discussion at the Council: the UK opt-out of the 48 hour week set by the Working time Directive.

During the discussions in the Council on the 5 December the Portuguese Presidency put forward the suggestion that the temporary workers directive should be discussed together with the proposals to amend the Working Time Directive 2003/88/EC which have also been deadlocked and which have overshadowed discussion of the agency workers directive.

[11] EPSCO Press Release: *2837th Council meeting, Employment, Social Policy, Health and Consumer Affairs, Brussels, 5-6 December 2007*

The *EC Working Time Directive* (93/104/EC of 23 November 1993), implemented in the UK by the *Working Time Regulations 1998*, SI No.1833, imposed a general limit of 48 hours on the working week. However, it allowed Member States to let individuals opt out of this limit if both employer and employee agreed. The UK was the only country to take advantage of this and allow an individual opt-out.

Many workers in the UK agree with their employers to "opt out" of the 48 hour limit on the working week. The European Commission has made proposals to reform the facility to opt out following a review. The European Parliament has voted to abolish it entirely. These negotiations have been subject to ongoing deadlock in the Council, with the UK trying to retain the opt-out and other countries trying to get it abolished.

The matter is further complicated by a decision of the European Court of Justice (ECJ) which ruled that all time spent by doctors on call at a "health centre" counts as working time.[12] These judgements are referred to as "SIMAP" and "Jaeger". Accordingly, abolition of the opt-out could result in staffing problems in the UK where there are proportionally fewer doctors than other EU member states. Also, as a result of the ECJ decision on working time, many other Member States may face infraction proceedings by the Commission since they are having difficulty complying with the judgement.

> After the extraordinary EPSCO meeting in November 2006, the Commission threatened to initiate infringement procedures against 23 of the 25 EU Member States at the time. Most of the 25 countries – with the exception of Italy and Luxembourg – are in breach of EU law on the basis of two rulings[13]

The Commission's solution has been to propose a new category of "inactive" time spent on call which would not count towards "working time". But this solution is held up by the disagreement over the opt-out; hence the pressure to resolve that disagreement. The Commission initially held back from taking infraction proceedings, but received complaints from doctors that they were failing their obligations under the Treaty. These complaints were upheld by the ombudsman and drew fierce criticism from the European Parliament. The Commission had little option than to proceed with infractions.

An article in the Financial Times in November 2007 reported on the run-up to the December 2007 meeting of the Council as follows:[14]

> Employers could be forced to give tens of thousands of temporary workers more rights after Britain yesterday appeared outmanoeuvred in the latest round of a long-running political scrap in Brussels over European Union labour laws.
>
> The Portuguese presidency of the EU proposed a deal that would force the UK to compromise on its opposition to giving temporary and agency workers full employment rights after about six weeks, EU officials said. Under the deal, discussed at a meeting of top EU diplomats, the UK would secure its prized exemption to EU legislation that limits the maximum working week.

8 The "employment status" issue

A separate but related question concerns the employment rights of temporary agency workers. Existing legislation contains a range of employment rights that could cover an individual temporary worker. Many of these rely on employment status; the often complex legal question of whether a person is to be regarded as an "employee" working under a

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12 *Landeshaupstadt Kiel v Jaeger* ECJ 2003 , ECJ case C-151/02, reported at [2003] IRLR 805; and *Sindicato Medicos Publica* (SIMAP) *v Valenciana* 2001 ICR 1116, ECJ case C-303/98 on 3 October 2000

13 EIRO, *Deadlock in progress on revision of working time directive*, 12 February 2007

14 "UK facing Brussels defeat on temporary workers" *Financial Times*, 22 November 2007

contract of employment, or whether they meet the various statutory definitions, such as that of a "worker" which apply to employment rights. In the case of a temporary worker this may be difficult to ascertain.

Neither the draft directive nor the text of Andrew Miller's Private Member's Bill sought to change or clarify the employment status of agency workers. They give agency workers the right to equal treatment but do not give them equal statutory employment rights if they don't already possess them. The employment status of agency workers is a complex and uncertain matter. In many respects, they have a unique status as there is a triangular relationship between the business which supplies them, the company which hires them and the workers themselves. Tax and national insurance legislation makes specific provision for agency workers so that the business which supplies them is responsible for deducting national insurance contributions and tax through the PAYE system.

However, just because someone is treated as an "employee" of the business for the purposes of tax and national insurance, it does not necessarily mean that they will be classified as an "employee" of that business for the purposes of employment law. Here everything will depend on the characteristics of the individual case. There is a range of possibilities. They might be employees of the employment business, employees of the hiring company, workers with a contract personally to provide services to the employment business, workers with a contract personally to provide services to the hiring company, employees of a personal service company, or self-employed. They may even be more than one or none of these. A number of the rights conferred by the *Employment Rights Act 1996* (ERA) only apply to "employees". The most important are probably the rights to claim unfair dismissal, redundancy payments and maternity and parental leave.

The important decision of the *Court of Appeal in James v London Borough of Greenwich*, delivered on 5 February 2008, is the latest in a line of cases on this question.[15] It went against the agency worker claiming unfair dismissal, holding that she did not have a contract of employment even though she had performed paid work for a period of three years prior to the Council's decision to replace her with another worker supplied by the agency. The judgement contained a post script addressing questions of economic and social policy and making it clear that these were matters for Parliament or the Government and not the courts. Under section 23 of the *Employment Relations Act 1999* ministers have wide powers to make regulations concerning the employment status of "atypical workers".

9 Other related developments

9.1 Previous EU legislation

There have been various moves in Europe to introduce legislation to improve the employment rights of "atypical" workers. In 1997, the EC adopted a directive on part-time workers and in 1999 it adopted a directive on fixed term workers. Both these measures implemented "framework agreements" negotiated between the representatives of management and labour at EU level (the "social partners"). This procedure for developing EU laws in the field of employment rights was introduced by the "Social Chapter" agreed at Maastricht in December 1991 and extended to the UK at Amsterdam in June 1997.

The EU adopted a *Fixed-term Work Directive,* designed to protect workers on fixed term contracts against discrimination, on 28 June 2001.[16] It was due to be implemented in Member States by 10 July 2001. The UK secured an extension until 10 July 2002, in the event, implemented it on 1 October 2002. The *Fixed-Term Employees (Prevention of Less*

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15 *James v London Borough of Greenwich* [2008] EWCA Civ 35 on 5 February 2008

16 Directive 1999/70/EC

Favourable Treatment) Regulations 2002, SI No.2034 were debated in the Second Standing Committee on Delegated Legislation on 15 July 2002 and in the Lords on 24 July 2002. They came into force on 1 October 2002 and provide as follows:

- Fixed term contracts are automatically converted to contracts of indefinite length after four years (the four years cannot start before 10 July 2002) (regulation 8);
- The completion of a limited-term or task contract counts as dismissal for unfair dismissal purposes (regulation 1(2) and schedule 2 paragraph 3)
- It is unlawful for an employer to treat a fixed-term employee less favourably than he treats a comparable permanent employee unless the treatment is objectively justified (regulation 3 and regulation 4).
- A fixed term employee who considers he is being treated unfairly can require his employer to provide a written statement setting out the reasons for the treatment complained of (regulation 5).

9.2 Vulnerable workers

The TUC set up a Commission on Vulnerable Employment which reported in May 2008.[17] This estimated that:

> … around two million workers in the UK find themselves in vulnerable employment – which we define as precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship. There are many and complex reasons for vulnerable work. Much exploitative treatment of vulnerable workers occurs because the law is not strong enough to prevent mistreatment, with employers using gaps in employment protection to treat staff badly. The result is extreme insecurity for workers who do not have contracts of employment, work through agencies, or who have reduced rights because of their immigration status.
>
> But many employers of vulnerable workers do also break the law, exploiting the powerlessness of their workers and the lack of effective enforcement of employment rights. Enforcement agencies do not have enough resources to guarantee employment rights and do not work well together. In certain low-paid sectors, including care, cleaning, hospitality, security and construction our evidence shows that some employers routinely break the law.

The Vulnerable Worker Enforcement Forum was launched by the Government in June 2007. Its members included representatives of industry, unions, enforcement agencies and Citizens Advice:

> The employment strategy paper, Success at Work, published in March 2006 committed Government to protecting vulnerable workers and tackling non-compliant employers.
>
> As part of this work, a Vulnerable Worker Enforcement Forum has been established. Chaired by the Employment Relations Minister, Pat McFadden, it brings together front line unions, workplace enforcement agencies, business groups and advice bodies to look at evidence about the nature and extent of abuse of workplace rights. It is also looking at whether abuses are being tackled effectively through existing enforcement and support mechanisms and whether improvements, or new approaches are needed to raise compliance without increasing burdens for good employers.[18]

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17 TUC, *Hard Work, Hidden Lives*, 7 May 2008

18 BERR, Vulnerable Worker Enforcement Forum

Action taken by government on vulnerable workers is covered in the final report of the Vulnerable Worker Enforcement Forum.[19] Among the various initiatives detailed were the *Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2007*[20] which amended to the 2003 Regulations[21]. These revisions gave agency workers a right to withdraw from services provided, such as transport, without suffering detriment.

The final report f the Vulnerable Worker Enforcement Forum detailed various of the Government's intentions:

- Improving information on employment rights
- Streamlining vulnerable worker access to the enforcement bodies
- Closer working between the enforcement bodies
- Improved advice and guidance for business
- Working with trade unions, advice bodies, business groups, local authority inspectors and others to raise awareness
- Further research on vulnerable workers

The *Employment Act 2008* sought to clarify and strengthen the enforcement framework for the National Minimum Wage (NMW) and employment agency standards. It gave the Employment Agency Standards Inspectorate enhanced powers of investigation and access to increased penalties, as well as strengthening penalties for non-compliance with the National Minimum Wage.

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19 BERR, *Vulnerable Worker Enforcement Forum, Final Report and Government Conclusions*, August 2008
20 SI 2007/3575
21 SI 2003/3319