



Implementing Equal Treatment in the UK

Recommendations of the Agency Work Commission



Chair's foreword

Kevin Green, REC Chief Executive and Chair of the Agency Work Commission



"I am delighted to present the initial findings and recommendations of the Agency Work Commission.

After years of the Agency Workers Directive being debated in Brussels, the focus is now on how equal treatment measures should work in the UK. The aim of the Commission is to make practical recommendations on UK implementation ahead of the Government publishing its official consultation. The current economic climate makes it even more important to get this right first time to ensure that the new regulations do nothing to hinder the creation of job opportunities.

The REC has always promoted the fact that agency workers are an important part of the UK labour market. On a daily basis agency workers provide vital support and expertise in all facets of the economy. They add dynamism and flexibility which employers recognise as a vital component of their workforce. At the same time agency work provides both short and longer-term opportunities for workers – often in highly skilled and well rewarded posts. For all these reasons it is vital that the equal treatment regulations are workable in practice and do not lead to a reduction in temporary work opportunities.

Professional recruiters will be at the sharp end of applying the new regulations. Most businesses in the UK do not have standardised pay scales or collective agreements which would facilitate the establishment of equal treatment. This therefore makes the task much more difficult. Equal treatment will have profound implications on the way that employers structure their temporary and contract workforces and raises a number of complex legal issues. As a result, the Agency Work Commission sought the input of large businesses and employment lawyers as well as the CIPD, and both large and small recruitment agencies.

Leading business organisations such as the CBI, FSB, IOD, Professional Contractors Group, CIPD and the British Chambers of Commerce have provided input. The TUC were also invited to provide a workers' perspective.

In addition to the work of the Agency Work Commission, the wider REC membership has engaged positively with a combined total of over 500 recruitment agencies taking part in our two 'Agency Summits' in 2008. The survey of members generated feedback from a further 300 members and REC sector group and regional meetings also formed part of the consultation process. Well over 1000 agencies have been engaged directly in this process and fed into the work of the Agency Work Commission.

The report highlights the practical measures that if implemented will avoid uncertainty, bureaucracy and additional cost that could act as a disincentive for employers to use agency workers.

Professional recruiters are used to making things happen and overcoming challenges on a daily basis, which is why the industry is promoting a pragmatic and 'can-do' approach to making the new equal treatment regulations work. The industry is committed to working with Government over the coming months."



Kevin Green Chair of the Agency Work Commission



Summary of the Commission's Recommendations

Recommendation 1 The scope of equal treatment should be limited to basic salary and other basic statutory rights

- A simple definition of what equal treatment covers is essential in order to avoid the kind of uncertainty, bureaucracy and cost that would impact on the viability of agency work in the UK.
- The definition of pay should be limited to a basic hourly rate. Occupational benefits and financial participation schemes that vary from one user enterprise to another should be excluded.
- Agency workers are already entitled to the statutory holiday pay which is rising to 28 days. Any extension of holiday pay to equivalents in the user enterprise would add bureaucracy and complexity with agencies having to establish different holiday entitlements for each temporary assignment.

Recommendation 2 Equal treatment must be easy to establish

- Where no such formal provisions governing pay or working time exist in the user enterprise, it is extremely difficult to find a basis on which equal treatment can be established.
- The text of the EU Directive does not refer to comparables. Therefore, equal treatment should not be established on the basis of an existing comparable worker, a predecessor to that role or a 'hypothetical' comparable worker.
- Equal treatment for temporary staff after 12 weeks of an assignment must be established with reference to what they would expect if recruited directly by the employer to occupy the same job.

Recommendation 3 The 12 weeks qualifying period must be easy to administer

- Ensuring that the 12 weeks period is easy to administer will avoid unnecessary bureaucracy and will limit the number of assignments that are terminated prematurely.
- There should be recognition for a genuine break between assignments. The Commission recommends that a break of 4 weeks should constitute a legitimate break.
- Although temporary workers in sectors such as social care and supply teaching may only do one or two days a week, the qualifying period should be 12 calendar weeks regardless of the amount of work carried out during those weeks.
- The 12 week period should apply to a specific job in a specific location and unit rather than to any role within the user enterprise.

Recommendation 4 Liability must rest with the end user as well as the agency

- The specific responsibilities of end users and recruitment agencies must be made clear in the regulations.
- The agency should be expected to take reasonable steps to establish equal treatment but should not be held responsible if that information turns out to be incorrect. There must be an element of compulsion on the user enterprise to provide relevant information to the agency.
- Liability issues linked to other employment structures such as umbrella companies and master and neutral vendors will need to be considered in detail.

Recommendation 5 Measures to limit the increase in employment tribunals must be promoted

- Enforcing equal treatment should be through the Employment Tribunal System. However, informal ways of resolving disputes before a case reaches an Employment Tribunal should be encouraged (although the regulations should not be prescriptive on this).
- The Commission will actively work with ACAS and TUC to propose informal methods of resolving disputes around equal treatment. The key is to provide agencies and employers with a range of options rather than one prescriptive formula.

Recommendation 6 The provision of the directive should be limited to individual workers

- Professional flexible workers such as interim managers and IT contractors supplied through limited companies/umbrella arrangements are often paid more than permanent workers. They are not the individuals that the legislation is aiming to protect and should be excluded in order to avoid unnecessary bureaucracy for agencies and user enterprises.
- The Commission proposes that Personal Service Companies be excluded as they are providers of business services and not engaged as workers.
- The recruitment industry will continue to support initiatives to address instances of bogus self-employment.





Implementing Equal Treatment in the UK

Recommendation 7 UK regulations must support legitimate means of derogating from the principle of equal treatment

- The Commission welcomes the option of being able to form workplace agreements which would avoid the bureaucracy of establishing equal treatment for each assignment.
- Agencies that employ their temporary workers directly and pay them between assignments should also derogate from the principle of equal treatment.
- Welfare to Work services should be excluded.

Recommendation 8 A clear communication strategy is essential for effective implementation

- Proceeding with implementing the Directive without clear communication and understanding will result in confusion and a massive increase in disputes with associated costs for all involved. A comprehensive communication campaign aimed at user enterprises, agencies and job seekers must therefore be a key part of the implementation process.
- There should be a minimum 12 month lead in time between the regulations being published and formal implementation. This will allow for the publication of guidance and the necessary systems to be put in place and end users to be reassured about the application of the Directive.

Recommendation 9 Implementation must be delayed until October 2011

- The implementation of the regulations should be delayed until October 2011 because of the worsening economic climate. In addition, this will allow for employers and agencies additional time to fully prepare for the new regulations.
- Any eventual economic upturn will be seriously hampered by restrictions on the flexibility of the national workforce.





- The Recruitment and Employment Confederation (REC) is the only professional body dedicated to representing the interests of the whole of the recruitment industry in Parliament, Whitehall, the European Commission and to press and opinion formers.
- The REC has nearly 8,000 recruitment agency offices in membership and over 5,500 recruitment professionals.
- The REC is committed to raising standards and highlighting excellence throughout the recruitment industry.

Endorsement by leading Business Organisations

British Chambers of Commerce (BCC)

The British Chambers of Commerce supports the work of the REC in ensuring that the implementation of the Directive results in minimal administrative burdens on agencies and businesses. The definition of pay must only include basic pay; any other definition is unworkable. We also agree with the REC that 12 weeks should mean 12 calendar weeks working on one assignment and that a break of four weeks should be sufficient to indicate a break. Implementation of this Directive must be delayed until the last common commencement date to try and mitigate the detrimental effect this legislation will have on the economy at this difficult time.

Confederation of British Industry (CBI)

We welcome the comprehensive work done by REC to pull together the views of the agency sector and the engagement the commission has had with the wider business community. It is clear that agencies and end-users are united in their desire to see the UK Regulations maintain important flexibilities in the UK labour market and that they clearly define the responsibilities of all parties. It is also now abundantly clear that the implementation of the UK Regulations must be delayed until October 2011 to allow for these new burdens to be absorbed once economic growth has returned.

Chartered Institute of Personnel and Development (CIPD)

CIPD shares many of the REC's concerns about the way in which the directive should be implemented. From the standpoint of employers, it is vital to have clarity both about what equal treatment means in practice and about the process for implementing it. We agree that it should not be necessary to identify a "hypothetical" comparator with whom a temporary worker can be compared. It is also important that the regulations are clear about the responsibilities of the end-user, for example to provide details about the nature of the job to be done.

We also back the call for implementation of the regulations to be delayed until October 2011. At a time of great economic uncertainty a delay will help to avoid unnecessary disturbance to the labour market, and to allow employers and agencies to prepare fully for the introduction of the directive.

Professional Contractors Group (PCG)

It is vital that freelancers are not included in the scope of this Directive. There are approximately 1.4 million freelancers in the UK, and while they are not the workers this measure is intended to protect, many of them use agencies to find their clients. We fully support REC's recommendation that the measure does not apply to those people who provide services to clients on a business-to-business basis. Given the difficult economic climate at present, the Government must ensure that businesses can continue to engage freelance suppliers with the ease and flexibility that makes them so valuable to the UK.

REC
15 Welbeck Street
London W1G 9XT

t: 020 7009 2100
f: 020 7935 4112
e: research@rec.uk.com

www.rec.uk.com

