

WEST DUNBARTONSHIRE COUNCIL

Report by Head of Human Resources and Organisational Development

Joint Consultative Forum: 22 September 2011

Subject: Agency Workers Regulations 2010

1. Purpose

- 1.1** To update Joint Consultative Forum (JCF) on the Agency Workers Regulations 2010 which come into effect on 1 October 2011.
- 1.2** The report advises JCF of the impact of the legislative change which gives agency workers hired by the Council on or after 1 October 2011 improved employment rights.

2. Background

- 2.1** From 1 October 2011, the Agency Workers Regulations 2010 come into force. The Regulations stem from the European Union "*Temporary Workers Directive*" giving agency workers entitlement to basic working and employment rights. The Regulations provide agency workers with certain employment rights dependent on service including the following:
 - From "Day One" of an assignment entitlement to access "collective facilities and amenities" of the hirer, such as canteen facilities, child care facilities, and also to be informed of any relevant posts advertised.
 - After a qualifying period of 12 weeks continuous service in the same role, the same basic working and employment conditions as "comparable employees" in the hiring organisation. The relevant terms and conditions for equal treatment include pay, working hours, breaks, annual leave entitlements. It excludes sick pay, pension, maternity/paternity leave and redundancy.
- 2.2** The Regulations do not change the employment status of an agency worker, they are still an employee of the agency hired to undertake a specific assignment by the Council. Agency workers can provide a solution to a short term service need (i.e. sickness cover) and should still provide a flexible and cost effective labour resource for the Council. They should not be used for long term staffing issues.

3. Main Issues

- 3.1** The Regulations place an obligation on agencies and hirers to ensure agency workers are provided with their acquired rights. Arrangements will be put in

place to monitor the use of agency workers, to ensure compliance with legislative rights.

Day 1 rights

- 3.2** From day 1 the agency worker should be given access to collective on-site facilities such as crèche, car parking, canteen. The agency worker must also be informed of any relevant vacant posts (excluding where the post is advertised for internal restructuring to avoid redundancies).
- 3.3** To ensure agency workers are furnished with this information on commencement of their work with the Council a *“Manager’s Induction Checklist for Agency Workers”* has been developed (Appendix 1). This should be completed by the manager on the day the agency workers starts working with the Council.

After 12 weeks

- 3.4** After the 12 week qualifying period in the same post the agency worker has the right to the same basic employment conditions as a comparable employee. These include: key elements of pay (including allowances and uplifts, e.g. Living Wage uplift), duration of working time, night work, rest breaks annual leave (not enhanced for long service), paid time off for ante natal appointments (pregnant workers).
- 3.5** Occupational sick pay, maternity or paternity pay, redundancy pay, payment related to pension, and expenses are not included in the scope of equal treatment.
- 3.6** The 12 week qualifying period is triggered by working in the same job with the same hirer for 12 calendar weeks. A calendar week will comprise of any period of 7 days starting with the first day of the assignment. Calendar weeks will be accrued regardless of how many hours the agency worker works.
- 3.7** The qualifying period is not retrospective and will only start to accrue after 1 October 2011, even if the assignment started before that date.

Qualifying Period

- 3.8** The Regulations contain anti-avoidance provisions which prevent a series of assignments being structured so as to prevent an agency worker accruing qualifying service.
- 3.9** The qualifying period only starts again if there is a break of more than 6 weeks between assignments, or if a new assignment with the same hirer is substantially different.
- 3.10** The qualifying period may be paused in some circumstances. This may occur if the worker takes: a break of 6 weeks or less; certified sick leave for no

more than 28 weeks; statutory/contractual maternity, adoption or paternity leave; or time off for public duties (including jury duty).

- 3.11** If an agency worker is treated unfairly they can make a claim to an employment tribunal for compensation based on loss of any benefit (i.e. pay). In addition, up to £5,000 can be awarded if it can be shown that the hirer has deliberately attempted to circumvent the regulations.

Recording and Reporting of Agency Workers

- 3.12** To ensure that we have accurate records of all agency workers engaged at any given point and to monitor their usage it is necessary to have a reporting and recording framework in place. Work is underway in developing the Workforce Management System to record and report upon this information and enable effective monitoring of use.
- 3.13** A procedure has been developed for the reporting of the engagement of agency workers. A form should be completed by managers engaging agency workers which is sent to HR Connect. HR Connect will then upload the information to the Workforce Management System.
- 3.14** HR will run reports on a regular basis and liaise with Departments to ensure accuracy of the information contained within in the system with regards to agency workers.

Benefits of Using Agency Workers

- 3.15** Agency workers should be for short term use, i.e. short term demand, to respond to planned/unplanned peak periods, to cover for short term sickness or for short term project work requiring specialist skills not readily available within the Council. Agency workers should not be used for long term anticipated shortages.
- 3.16** In some areas of the Council, e.g. Housing Repairs and Maintenance, it is more cost effective to use agency workers to deal with peaks in demand, increases in workload and to address any short term imbalance in the trade mix of their core craft employees. It makes more business sense to engage workers only when work is available.
- 3.17** Although costs increase after 12 weeks the use of agency workers may still generate a saving therefore it is important that a cost analysis is carried out and guidance on this will be issued to managers.

4. People Implications

- 4.1** This new provision will provide the agency workers the Council engages with improved employment rights with no effect on direct employees.

4.2 To ensure compliance with the new regulations HR&OD will update key policies and ensure the changes are communicated to managers and placed on the HR&OD Knowledge Portal.

4.3 There is an additional requirement on managers to record and monitor the use of agency workers.

5. Financial Implications

5.1 There are potentially significant financial implications as a result of these regulations depending on the Council's spend on agency workers. However the implementation of these regulations coincides with the implementation of the National Framework Agreements for Temporary & Interim Staff for the Scottish Public Sector and this should support mitigation of increase in expenditure.

5.2 Two key areas have been highlighted as contributing towards to Council's high spend on agency workers: absence and the length of time to fill essential vacancies. The issue of absence is being addressed through the Member Officer Working Group and the work being undertaken on establishment management should support process improvements in filling vacancies.

5.3 The use of agency workers to undertake projects within the DLO area has been cost effective to date, however with the implementation of the Regulations a further cost analysis is required to assess future usage.

6. Risk Analysis

6.1 If the Council does not put in place adequate systems to monitor and control the use of agency workers and an agency worker feels they are treated unfairly they can make a claim to an employment tribunal for compensation based on loss of any benefit (i.e. pay).

6.2 In addition, up to £5,000 can be awarded if it can be shown that the hirer has deliberately attempted to circumvent the regulations

7. Equalities, Health & Human Rights Impact Assessment (EIA)

7.1 No significant issues were identified in a screening for potential equality impact on this measure.

8. Strategic Assessment

8.1 The introduction of a central recording and monitoring system for the Council's use of agency workers will provide detailed information to feed into the Workforce Planning process and allow analysis to be undertaken in terms of value for money.

9. Conclusions and Recommendations

- 9.1** From 1 October 2011 new regulations provide agency workers certain employment rights including access to facilities and vacancies from Day 1 and to basic working and employment conditions such as pay and annual leave after a qualifying period of 12 weeks.
- 9.2** The Workforce Management System is being developed to support the implementation of the regulations on 1 October and Managers Guidance will be issued prior to this date.
- 9.3** JCF is asked to note the contents of the report and the actions being taken to ensure compliance with legislation.

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Appendices:	Appendix 1: Manager's Induction Checklist for Agency Workers
Background Papers:	Agency Workers Regulations 2011
Wards Affected:	N/A