

Research Paper

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The effects of Agency Workers Regulations on agency and employer practice

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2014

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EXECUTIVE SUMMARY

Background

- This report looks at the effects of the Agency Working Regulations (AWR) on employer and agency practice. It presents recent statistical data on agency working from the Labour Force Survey, alongside findings from 28 interviews, conducted across 11 agencies, four user firms, union and industry representatives, along with a small number of agency temps.
- The research was conducted in two main stages between January and August 2013 through a combination of telephone and face to face interviews, supplemented with documentary evidence and a comprehensive desk-based review of the impact of the regulations.
- The European Union Agency Workers Regulations 2010 came into force in Britain on 1 October 2011 with the aim of ensuring protection of temporary agency workers through the application of the principle of equal treatment provisions.
- From day one agency workers are entitled to the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the hirer, and are entitled to be informed about job vacancies
- After a 12 week qualifying period, agency workers are entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment. This specifically covers pay (including any fee, bonus, commission, or holiday pay relating to the assignment) but does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay (Acas, 2012).
- There has been much debate about which workers are in and out of scope of the AWR, with particular attention focusing on the Swedish Derogation or 'Pay between Assignments' (PBA) model.
- The Swedish Derogation occurs when a Temporary Work Agency offers an agency worker an ongoing contract of employment and pays the agency worker between assignments.

Findings: The size of the agency workforce before and after the AWR

- Figures from the Labour Force Survey show that the number of agency temps fell sharply during the recession from 2008, reaching a trough of 245,000 in 2009. In contrast to the 1990s recovery, agency work grew more quickly as output showed recovery, albeit haltingly, through 2010 and 2011.
- Just prior to the AWR, in autumn 2011, there were 285,000 agency temps in work in the UK. This rose to over 300,000 just after the regulations were implemented, and rose as high as 321,165 by Winter 2012

- By Winter 2012 agency temps comprised 1.27 per cent of the employed workforce – this is the highest that agency employment as a proportion of the employed workforce has been since LFS figures began to be collated in 1981. This suggests that the regulations have not had an effect of dampening demand for agency labour, although clearly the changes observed over the 2011-2012 period may also reflect changing economic conditions.
- Looking at an additional question in the LFS (asking whether a worker is paid for their work by the client firm, or by an employment agency), it is possible to estimate the extent to which contractual changes (where the agency becomes the employer of the temp) have become more commonplace since the AWR. This measure might be seen as a proxy (but not a precise indicator) of the rise of Swedish Derogation arrangements.
- The figures reveal that the numbers of agency temps stating they were paid by an agency rose sharply between Autumn 2011 (just before the AWR) and Winter 2011 (just after the AWR were introduced) rising from 195,000 to 218,000 (a rise of 11 per cent).
- Comparing Autumn 2011 figures (just before the introduction of the AWR) with Autumn 2012 figures (a year after the introduction of the AWR) those agency temps stating they were paid by the agency for the work they did was some 13 percentage points (24,000 temps) higher.
- These data provide some indirect support for the notion that there have been shifts in contractual arrangements since the AWR which may have affected up to one in twelve (eight per cent) of the agency workforce (24,000 out of a total of the 305,000 temps in autumn 2012).

The effects of the regulations: perspectives from temp agencies and peak bodies

- For most of the agencies interviewed, there was broad consensus that, given the long lead-time to the regulations, they had done a lot of preparatory work, and that as a result, their perceptions were that they were more geared up for the introduction of the regulations than client firms
- Seminars, briefings, legal advice and attendance at Association of Labour Providers (ALP) or Recruitment and Employment Confederation (REC) events and roadshows had been helpful in preparing agencies for the AWR.
- Most agencies contacted their clients to inform them of their approach to the regulations. This was felt to be good practice, and showed a proactive and positive approach to engaging with the regulations. Others were motivated by compliance, and adopted a strategy which clearly indicated to clients how they, as an agency, were complying.

- The one aspect of the regulations where client firms were more proactive was around seeking guidance on potential new staffing strategies. Agencies reported receiving a lot of enquires from clients about the Swedish Derogation.
- For workers, there was, according to many of the agencies interviewed, very little knowledge about what the regulations meant for them. Many of the nuances of the regulations (particularly around issues such as the Swedish Derogation) had not been picked up by temps.
- Agencies were clear about their responsibilities for establishing comparators and keeping records of these comparisons. In short, the agencies interviewed felt that they were able to clearly deal with their responsibilities in terms of ensuring equal treatment over pay.
- The largest burden of the regulations, according to the REC and agencies was the bureaucratic cost. Estimates of the time spent ensuring compliance with the regulations varied a lot according to agency size – amongst those agencies able to place a figure on the cost, it was estimated to be between half a person day to two person days per week.
- For some, most of the activities undertaken around the regulations were undertaken with the aim of ensuring compliance. For others, the regulations had provided an opportunity to engage positively with clients and workers, and to use industry-body guidance around using the regulations to promote positive working relations.
- A theme which occurred across a number of interviews was the tensions between working in partnership with other agencies around the regulations (sharing information, trying to promote good practice, and developing regionally based or nationally based industry responses to the regulations) and the realities of competing with other agencies for client business.
- The Swedish Derogation was being used in a number of segments of the agency industry, according to interviewees, in areas such as warehousing, industrial and assembly-line work. This was being pushed by client firms, but agencies were also complicit in their promotion.
- Derogation contracts were seen as attractive to clients where large numbers of temps, sometimes involving headcounts in the hundreds, were being supplied on a long-term basis to clients. Here, the costs to the client of complying with the equal pay element of the regulations was seen as particularly significant. Both agencies and the REC pointed to the risks of such arrangements for agencies, and some agencies highlighted the risks and trade offs that these contracts present for workers.
- It is under high-volume, long term supply conditions that agencies may be willing to accept the risks associated with PBA/Derogation models, and where the issue of having to provide pay between assignments is least likely to arise.

- Whilst under derogation contracts, workers do benefit from some security through a minimum level of pay between assignments, this comes at the considerable cost of losing the right to equal treatment. This trade off is particularly high and detrimental for the temp if he/she is being utilised on a long-term, continuous basis within a single client firm (i.e. the areas where the Derogation appears to be taking hold)

The effects of the regulations: client firm and union perspectives

- The client firms interviewed also argued they had good awareness of the regulations, and compliance with the regulations had not been perceived to be particularly onerous for the employers interviewed.
- There was some evidence that the regulations had had an impact upon their use of agency labour, although these changes were difficult to decouple from the effects of economic conditions, particularly within the public sector, where cost cutting exercises over the same time period had impacted upon use of temps.
- Partnerships between agencies and firms were seen to be important to developing a joined up approach to dealing positively with the regulations.
- There is significant union activity and campaigning around the AWR. Much union activity around the regulations was focused on raising awareness of worker rights, and of highlighting perceived loopholes in the regulations, and the Swedish Derogation was the focus of a lot of campaigns.
- Alongside this, unions had adopted a range of organising strategies to try and improve terms and conditions for agency temps, and these strategies had, in some cases led to consolidation of agency temps on permanent contracts.
- The regulations may have provided some impetus to these organising strategies, but was not seen the primary factor behind their success. Success was based on relatively high agency temp union membership, and where the union had developed a dialogue around the use of agency workers with both management and with agency suppliers.

1. INTRODUCTION

The European Union Agency Workers Regulations 2010 came into force in Britain on 1 October 2011 with the aim of ensuring protection of temporary agency workers through the application of the principle of equal treatment provisions. Some equal treatment provisions (notably pay) apply after an agency worker has been continuously employed for 12 weeks on an assignment, whilst some rights apply from day one, such as access to vacancies and facilities.

Agency working creates a 'triangular' relationship between the worker, the client (or 'user') firm and the agency. The dynamics of this relationship have been the subject of much academic research (see for example, Peck and Theodore, 1999; Forde, 2001; Coe et al, 2010), Their research has focused on the evolution of client, worker and agency relations, and has also examined the impact of external actors, notably unions, government and peak organisations, on each of the three parties. This triangular relationship offers a useful lens through which to analyse and understand how the regulations have shaped agency and employer practice.

Previous Acas-funded research on agency working (Forde and Slater, 2011), conducted 18 months prior to the regulations, found that preparedness for the Directive varied markedly amongst agencies. The regulations set out obligations of both agencies and employers towards workers, but Forde and Slater's research highlighted that agency strategies were likely to vary from 'minimal compliance' to 'strategic adaptation' of their practices. Client firms too were already, in 2010, seeking to anticipate the likely effect of the regulations, and some were planning to amend their strategies towards the use of agency workers. Would, as some client firms and agencies suggested prior to the AWR, employers' use of agencies decline, perhaps due to the increased costs associated with equal treatment rights for temps? The precise nature of how agencies and firms would respond, and the implications of these responses remained unknown. A key aim of the current research is to extend understanding of how, and why, agencies and employers have responded in the ways they have, looking back on the first two years of the AWR.

One key reason behind the uncertainty around agencies and employers' responses to the AWR lay in the fact that there are many different types of client-agency, client-worker and agency-worker relationships in existence. It is not the purpose of this study to look at all of these contractual forms in detail, but it is important to recognise that only some of these relationships are deemed to be 'in scope' of the AWR. The AWR guidance notes (see BIS, 2011) provided some clarity over which arrangements were 'in scope' and 'out of scope', with the aim of ensuring that the equal treatment provisions could be applied in the spirit in which they were intended – to protect agency workers and improve their terms and conditions of employment in line with the equal treatment requirements.

However, this myriad of contractual forms has also created space for individual interpretation of the regulations and has created the possibility for agencies and client firms to adapt their strategies and move into new forms of contracting and relationships, which may or may not be in scope of the regulations. Some commentators anticipated the increased use of in-house agencies or people banks by client firms (thought to be out of scope of the regulations). Particular attention was also attracted by the potential for 'Swedish Derogation' or Pay Between

Assignments (PBA) models to be adopted by firms. Here, agencies take on temps as employees, guaranteeing them some pay between assignments, if no work is available, but under which the worker waives right to comparability and equal pay with workers within client firms. As an employee of the agency, the issue of comparability with workers in the client firm in which they are placed is effectively taken out of the picture. There was much speculation about whether firms would push agencies towards PBA or Derogation models, and whether agencies would actively promote these approaches as a new type of approach to temporary labour supply (see Professional Contractors Group, 2011). This model is recognised within the AWR, and as a result, some view PBA models as one of a range of contracting relationships that agencies might consider following the regulations (Professional Contractors Group, 2011). Others saw the potential development of PBA models as a clear 'workaround' to the regulations (Veale, 2011). This study will shed some light on the use of the Swedish Derogation and other active responses by client firms and agencies to the regulations.

It is important to recognise that the regulations in the UK were formulated with input from both unions and industry representatives, and the study will seek to highlight the views of both of these parties, alongside those of client firms and employers. The study also seeks to examine the implications of the regulations for workers, given that the main purpose of the regulations is to improve the terms and conditions of work for agency temps. Despite this, it is important to point out that there is only relatively little direct evidence in this study based on first-hand interviews with workers, and this is an area where future research might usefully focus.

The specific research questions to be addressed are as follows:

- How, if at all, have client firms altered their use of agency workers since the adoption of the AWR?
- How have employers and agencies changed their employment practices and strategies towards agency workers since the implementation of the directive?
- In what ways has the relationship between agencies and firms altered since the AWR, and what new or different contractual arrangements are observed? What are the implications of these arrangements for workers, and for compliance with the AWR?
- Which elements of the Directive have had the most effect on employer and agency practice?
- How, has the role of trade unions, employee representatives and industry representatives in relation to representation of agency temps changed since the AWR?

The study presents findings from 28 interviews, conducted across 11 agencies, four user firms, union and industry representatives, along with a small number of agency temps. The research was conducted in two main stages between January and August 2013 through a combination of telephone and face to face interviews, supplemented with documentary evidence and a comprehensive desk-based review of the impact of the regulations.

The report is structured as follows. Chapter 2 provides background on the regulations and some statistics on the agency workforce and contractual terms of agency temps. Chapter 3 sets out the methodology used in the study. Chapter 4 sets out results from the interviews with agencies and industry representatives, whilst in Chapter 5 findings relating to client firms and unions are presented. Chapter 6 provides some brief conclusions.

2. THE AGENCY WORKER REGULATIONS IN THE UK

Introduction

This chapter provides an overview of the introduction of the Agency Worker Regulations in the UK, looking at the history of efforts to regulate agency work at EU level, the implementation of the AWR in Britain, and the specific provisions in the AWR. Which aspects of a contract are included in equal treatment provisions? What types of arrangements are in and out of scope? This part of the chapter helps to provide an understanding of what the regulations were designed to achieve, as well as areas where there may be challenges associated with implementation, or where new contractual arrangements may evolve. It also provides a rationale for the themes covered in the interviews with employers, agencies, unions, workers and industry representatives. The remainder of the chapter then provides some statistical data on the number of agency workers in the UK, prior to and following the regulations, and seeks to provide some crude indicators of changes to contractual arrangements for agency temps following the AWR.

Background to the regulations in the UK

The Directive and subsequent AWR represented an important shock to the agency work sector in the UK, which has historically been subject to relatively few requirements. Until this point, temporary agency work arrangements in the UK had fallen outside of the scope of much *employment* legislation altogether. Neither the 1973 Employment Agencies Act, which required the licensing of temporary employment agencies, nor the 2003 Employment Agencies and Employment Businesses regulations, clarified the ambiguous employment status of agency workers generated by the 'triangular' nature of their employment relationship. Where agency workers have seen some improvement in their protection is as a by-product of other, more general regulatory changes. For example, both the national minimum wage (1999) and the Working Time Regulations (1998) apply to the broader category of 'worker', with the latter including explicit provision to extend coverage to agency workers who may otherwise fall outside its scope. Yet even these broad measures have been implemented in the UK in such a way that some agency workers (and other vulnerable groups of workers) have slipped through the net of regulatory coverage (see for example, Adnett, 2000).

In 2002, the European Commission set out a draft Directive on agency working, which, in line with earlier Directives on part-time workers and fixed-term temporary staff, was built on the principle of non-discrimination. In practice, this was to mean equal treatment to a comparable permanent employee in client firms in which agency workers are placed. The Directive was opposed by the UK, on the basis that the equal treatment provisions threatened the government's desire to maintain a 'balance between flexibility and protection' (DTI 2002), and could have negative effects on an industry that was one of the fastest growing in the UK. After lengthy discussion and continual pressure from trade unions, a compromise was reached between the UK business and trade union social partners (the TUC and CBI) in May 2008, providing for equal treatment for agency workers in the UK to be effective after a period of 12 weeks continuous employment in a client firm. The falling away of UK opposition paved the way for

a revised EU Directive, which was accepted by the EU Council in June 2008, with the UK Agency Working Regulations formulated soon after.

Despite a change of government in 2010, the UK AWR remained virtually unchanged when implemented in October 2011. After 12 weeks in a given job, an agency worker will be entitled to equal treatment, covering at least the basic working and employment conditions (most notably pay and working time) that would apply to the worker concerned if s/he had been recruited directly by that undertaking to occupy the same job. These requirements are seen to form the main costs of the new regulation, and have been at the centre of the government's formal impact assessments and at the heart of employer opposition.

New rights for agency workers under the regulations can be split into those which are available from day one of their employment on an assignment, and those that are available after 12 weeks of continuous employment in a firm.

From day one agency workers are entitled to:

- the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the hirer
- be informed about job vacancies (Acas, 2012).

After a 12-week qualifying period, agency workers are entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment. This specifically covers:

- pay - including any fee, bonus, commission, or holiday pay relating to the assignment. It does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay
- working time rights - for example, including any annual leave above what is required by law. (Acas, 2012)

Agency workers are also entitled to paid time off to attend ante-natal appointments during their working hours.

The Agency Working Directive also sought to improve access to training for temps stating that EU Member States shall take suitable measures to improve an agency worker's access to training from day one. However, the AWR, when transposed in Britain do not include any requirements regarding access to training.

The regulations cover continuous assignments within a client firm. In reality many agency temps are sent on assignment to many firms, often through multiple agencies (Forde, 2001). Some may therefore accrue 12 weeks of continuous employment but not with a single client firm. The regulations stipulate that if an agency worker is working on more than one assignment the accrual to 12 weeks will occur separately across each assignment.

The regulatory guidance also sets out a range of 'anti-avoidance' stipulations (BIS, 2011) which are designed to prevent assignments being structured in such a way so as to prevent an agency worker completing a qualifying period. These are likely to be tested in tribunal cases which will arise over the interpretation of the regulations and equal treatment of temps. These provisions focus on the 12

week continuous employment period, the movement of agency workers around a series of roles within the same firm, and the movement of agency workers onto contracts with different subsidiaries within the same organisation.

Here, BIS provides specific guidance on when the 'clock stops ticking' on the accrual of continuous employment towards the 12 week qualifying period. These are designed to cover attempts to avoid regulations by changing elements of a temp's contract with the same hirer prior to the 12 week qualifying period being reached. The key criteria to set the clock back to zero is that a new assignment would need to comprise 'substantively different work or duties'. In assessing whether this is the case, tribunals are guided to look at aspects such as:

- Are different skills and competences used?
- Is the pay rate different?
- Is the work in a different location/cost centre?
- Is the line manager different?
- Are the working hours different?
- Whether the role requires extra training - and/or a specific qualification that wasn't needed before?
- Is different equipment involved?

(BIS, 2011)

The BIS guidance also states that in tribunal claims or grievances around the regulations, attention will be paid to:

- Situations where an agency worker is moved back and forth across a group where there is common ownership via holding companies and subsidiaries and the intention is to deprive the agency worker from receiving equal treatment.
- Any situation where a pattern of assignments emerge that are designed to deliberately deprive an agency worker of their entitlements.

Overall, then, the guidance seeks to cover the possibilities of any intention to deprive the worker of equal treatment rights. These measures are designed to encourage compliance with the regulations and ensure that the regulations are interpreted in the spirit in which they were intended at EU.

In scope or out of scope? Contractual arrangements and the AWR

A lot of attention in the lead up to the regulations focused on the panoply of contractual arrangements under which agency temps were employed, and the challenges of ensuring that the regulations covered all relevant arrangements. There is detailed guidance in the regulations about which arrangements are in and out of scope of equal treatment.

Those workers seen to be out of scope are (BIS, 2011):

- 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)

Whilst these examples provide a fairly clear cut definition of which workers are out of scope, there has been much interest in contractual arrangements which have become increasingly common in the agency industry over recent years, notably intermediaries which operate as umbrella companies, master/neutral vendors and 'preferred suppliers' to agency firms (Forde and Slater, 2011). Using the definitions of the Recruitment and Employment Confederation (REC) master vendor relationships are 'where a client will appoint one recruitment agency to be responsible for supplying staff as and when required by the client. Neutral vendor arrangements are different in so far as they do not supply any staff themselves but rather manage various second tier suppliers' (REC, 2013). Provisions in the regulations seek to ensure that workers operating as agency temps through all such arrangements are in scope of the regulations, although there has been much debate about the practical challenges of ensuring that workers on such arrangements are included in practice.

Prior to the introduction of the regulations, most attention focused on one of the provisions in the regulations – the so called Swedish Derogation, or Pay Between Assignment model, an additional type of contractual arrangement included in the Regulations after negotiations by the Swedish Government.

The Swedish Derogation occurs when a Temporary Work Agency offers an agency worker an ongoing contract of employment and pays the agency worker between assignments. It effectively means that after 12 weeks with a hirer the agency worker will not be entitled to the same pay as if they had been recruited directly, although workers covered by this exemption will still be entitled to other new provisions under the regulations, for example annual leave after 12 weeks. For this derogation to apply, the agency must offer an agency worker a *permanent* contract of employment and pay the worker some pay (see below) between assignments. Workers need to be told that entering into the contract means giving up the entitlement to equal pay.

A 'zero hours' contract does not count as a derogation contract, although it seems from the BIS guidance that contracts of greater than 'one hour' per week may provide a sufficient amount of mutuality of obligation to meet the requirements of the derogation contract (BIS, 2011).

There are also rules about how much and for how long the agency must pay workers, under derogation agreements. It must be at least half of pay received on assignment based on the highest rate during previous 12 weeks and it cannot be below the National Minimum Wage (BIS, 2011, Acas, 2013). The payment between assignments must also last for at least four weeks before the contract can be terminated (Acas, 2013). During non-working periods, the agency must take reasonable steps to find future work for the worker and workers are obliged to demonstrate their continuing availability for work.

Industry bodies, such as the Professional Contractors Group and the Recruitment and Employment Confederation were keen to point out that the Swedish Derogation was explicitly drafted into the regulations, and is therefore, legal. The expectation was that few agencies would avail of this option, since it required agencies to find work for temps on a continuous basis, or pay workers whilst they were not on assignment (Professional Contractors Group, 2011, Recruitment and Employment Confederation, 2011). For others, the potential to use these arrangements as a workaround to the regulations was clear – the perception of

unions was that if these were to be used as a way of avoiding the regulations, this was clearly not in the spirit of improving pay and conditions for agency workers (see Veale, 2011).

Estimates of the agency workforce

How has the use of agency labour changed since the introduction of the regulations, and how do current figures compare with longer-term trends? Headline figures on the number of agency workers in Britain can be drawn from the large-scale government survey, the Labour Force Survey (LFS). Figure 1 charts patterns in agency working up to the introduction of the AWR in 2011, and compares this to all temporary employment and permanent employment using LFS data. By this measure, agency working grew particularly strongly in the labour market recovery of the 1990s. Numbers continued to rise until 2001, later than the peak in temporary work in total, leading to a rising share of agency jobs within temporary jobs. From a peak of 275,700 agency workers in 2001, numbers fell back slightly before a modest recovery from 2005. Reflecting their vulnerability, agency jobs fell sharply as the 2008 recession intensified, reaching a trough of 245,000 in 2009. In contrast to the 1990s recovery, agency work grew more quickly as output showed recovered, albeit haltingly, through 2010 and 2011. There were 270,000 agency workers, according to LFS figures in Spring 2011.

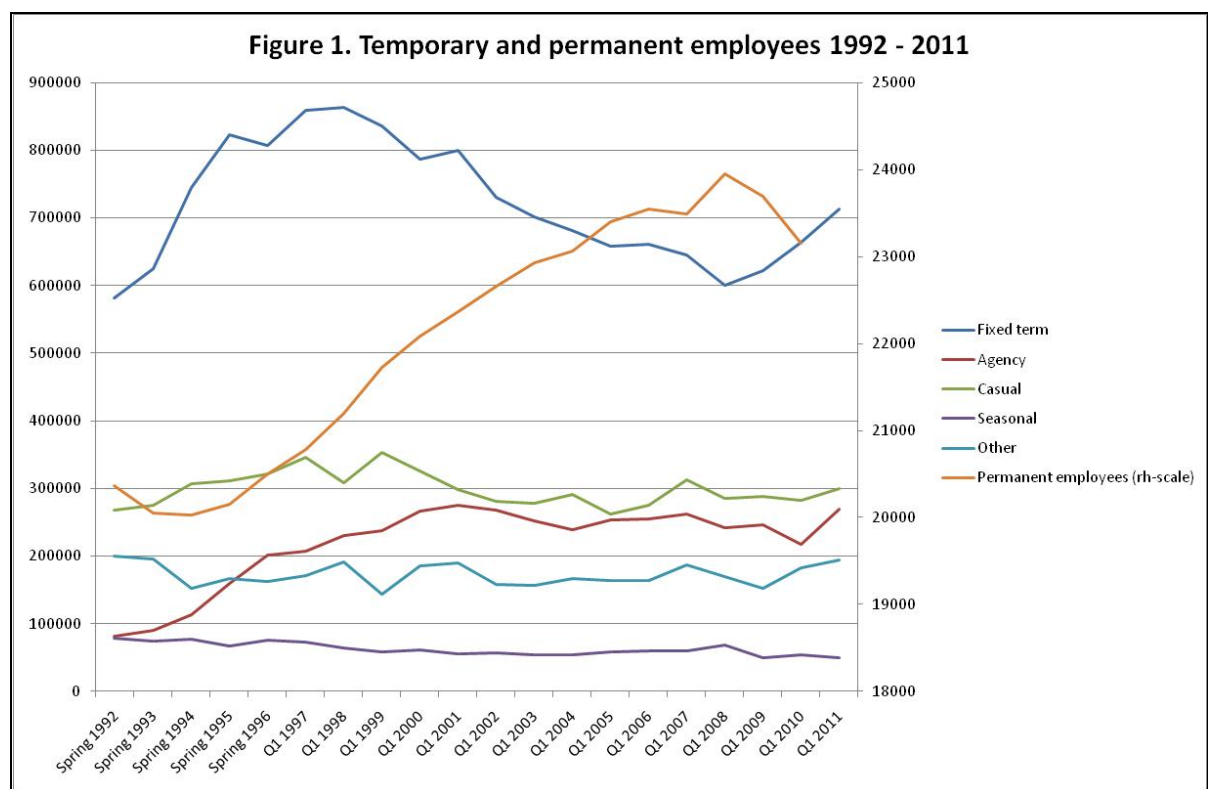


Table 1: Recent trends in agency working in Britain since the introduction of the AWR

	Spring 2011	Summer 2011	Autumn 2011	INTRODUCTION OF THE AGENCY WORKING REGULATIONS	Winter 2011	Summer 2012	Autumn 2012	Winter 2012
Number of agency temps	271,028	274,544	285,395		305,843	297,978	304,192	321,165
Number of temporary employees	1,527,537	1,600,913	1,541,344		1,565,903	1,601,502	1,650,350	1,686,557
Agency temps as a proportion of temporary employment	17.7	17.1	18.5		19.5	18.6	18.4	19.0
Number of employees	24,950,272	25,011,343	24,887,791		24,908,457	24,971,498	25,189,222	25,305,383
Agency temps as a proportion of total employment	1.08	1.09	1.15		1.23	1.19	1.21	1.27
Agency temps who state that they are paid for their work by an agency	190,491	194,434	194,996		217,769	205,770	218,641	221,427

Source: LFS, 2011-2012, Authors' own calculations. Data are weighted. Main variables used: STATR, JOBTYP, JBTP10, SELF2

Table 1 above looks at the numbers in agency employment immediately before and after the introduction of the AWR in Britain. We present quarterly data here, with the aim of looking at short-term effects. The first row of data is directly comparable with Figure 1 above, and shows that the number of agency temps rose in late 2011, reaching 300,000 for the first time in Winter 2011, just after the regulations were implemented, and rising as high as 321,165 by Winter 2012. By Winter 2012, then, the most recent data available, agency temps comprised 1.27 per cent of the employed workforce – this is the highest that agency employment as a proportion of the employed workforce has been since figures began to be collated in 1981. This suggests that the regulations have not had an effect of dampening demand for agency labour, although clearly the changes observed over the 2011-2012 period may also reflect changing economic conditions.

Table 1 also includes an *alternative* (not directly comparable with the figures above) measure of those working through agencies, available in the LFS only in the last three years. This new measure may provide some indirect insight into any contractual changes that have occurred since the introduction of the regulations, including the use of the Swedish Derogation. Row 6 presents a measure of agency temps who state that they are not paid for their work by the company where they are placed, but rather by an employment agency. It is possible to argue that this is a proxy measure for those workers who have a direct employment relationship of some kind with the agency, rather than the client firm in which they are based. The figures reveal that the numbers of agency temps stating they were paid by an agency rose sharply between Autumn and winter 2011, rising from 195,000 to 218,000 (a rise of 11 per cent). Comparing autumn 2011 figures (just before the introduction of the AWR) with Autumn 2012 figures (a year after the introduction of the AWR) those agency temps stating they were paid by the agency for the work they did (rather than the client firm) was some 13 percentage points (24,000 temps) higher. It is not possible to measure precisely how many of the 219,000 agency temps in Autumn 2012 who state they are being paid by the agency are on Swedish Derogation contracts, but the series do provide some indirect support for the notion that there have been shifts in contractual arrangements since the AWR which may have affected up to one in twelve (eight per cent) of the agency workforce (24,000 out of 305,000 temps).

Conclusion

The introduction of the AWR provided a regulatory shock to the agency sector in the UK. The regulations seek to improve the terms and conditions of agency temps, and the regulatory guidance does provide detailed guidance on the arrangements and types of workers that are in and out of scope of coverage. Whilst there was a lot of speculation about the likely responses of employers and agencies towards the regulations, very little is known to date about the actual responses in practice. Large scale survey evidence from the LFS reveals that the regulations do not appear to have dampened employer demand for agency temps, with the trend over 2011 and 2012 showing rises in the numbers employed on agency contracts. The LFS data also provide some support for the idea that some temps (up to eight per cent) may have seen a shift in their contractual arrangements since the introduction of the AWR, although it is only possible to infer this indirectly from questions asked in the LFS. Chapters 4-5 will provide more direct evidence on this issue.

3. METHODOLOGY

Introduction

The report sets out the findings from a study investigating employer and agency responses to the AWR. The starting point for the project was that whilst there had been much speculation about the possible responses to the regulations there was little evidence of the *actual* responses of employers and agencies following the introduction of the regulations in 2011. Large scale survey data, such as that reported in Chapter 2 can highlight broad trends, from which we can speculate about employer and agency responses. However, there is a need for a more detailed understanding of what responses have been adopted, and why, and the qualitative approach adopted in this study is well-suited to addressing these questions. The chapter provides a rationale for both the qualitative interviews conducted in the empirical work, and the supplementary desk-based analysis of responses to the regulations. The chapter then provides details of the employers, agencies, agency temps, unions and industry representatives that comprised the 28 interviews conducted in the study.

The research strategy

A qualitative approach to the research was felt to be appropriate given the exploratory nature of many of the issues under study. Chapter 1 pointed to the academic interest in the 'triangular' relationship between agencies, employers and workers, and the development of an understanding of the dynamics of this relationship, as well as the role of other actors such as unions, government and industry representatives. The regulations provide an 'external shock' to the activities of the three main actors in the agency relationship, which, it might be anticipated, would have a significant impact upon the relationship between the three parties. Nonetheless, it is important to recognise that there was also a long lead time before the introduction of the regulations. As such, it is plausible to argue that the regulations might have had relatively little effect on practice, if agencies and employers had already anticipated and prepared for the effects of the regulations, prior to their introduction. The actual effects of the regulations on employer and agency practice, are therefore, ultimately an empirical question that can be examined through probing of the actions of employers and agencies following the regulations. The aim of the interviews then, was to try and illuminate a range of issues relating to the introduction of the regulations.

In selecting agencies, the overarching aim was to provide coverage of some of the issues identified in chapter 1 and chapter 2 of the report. Interviewees were approached and selected with the aim of providing coverage of a range of contracting relationships. Previous research by the authors had found that agency strategies and responses varied by size and geographical scope of agencies, and so it was felt important that the sample included agencies operating at a local, regional, national and multinational level. It was hoped that the sample selection would also include agencies operating across a range of sectors, including those where the Swedish Derogation was expected to come into play (such as food retail, hospitality, manufacturing and low skilled operative jobs).

Table 2: Interviews with agencies

Agency	Notes
Agency A	Local agency general supply across all industrial areas
Agency B	Multinational
Agency C	Regional agency. . Industrial specialist
Agency D	National – specialist in the supply of managerial staff
Agency E	Regional - generalist
Agency F	Regional – particular specialism in Public sector, IT and commercial
Agency G	National agency
Agency H	Regional agency
Agency I	Local agency – generalist
Agency J	London based agency. . Industrial, construction
Agency K	Multinational

The insights from employers are more limited in number and scope. The rationale for these was to provide an overview of a range of responses adopted by employers to the Directive, as well as providing an insight into the (changing) relationships between agencies, client firms and workers. In one of the cases, insights about employer responses have been inferred from interviews with union representatives. In another of the cases, insights on the case were gathered from agency temps, rather than from the employer. In all cases, primary interview data were supplemented with desk-based publicly available information on the case.

Table 3: Client firm case studies

PublicCo1	Large public sector organisation . Framework agreements with multiple agencies. Recent user of neutral vendor to arrange agency staffing requirements
ManufacturingCo	Automotive manufacturer > 20,000 employees. Contracts with a number of agencies. Recognition agreement with major national union Agency labour up to 10 per cent of workforce
RetailCo	Retail organisation. Short term user of temps,
PublicCo2	Industrial transportation sector with in house agency to supply some temps

Finally, interviews were also conducted with a range of union representatives and agency/employer representatives, with the aim of developing an understanding the actions and responses of a broader range of stakeholders impacted by the regulations. Supplementary data on the perceptions of peak-level organisations and unions have been drawn from a detailed desk-based review of responses to the regulations.

For each agency, employer, union, or industry representative, contact was made by email and/or telephone. Some of these contacts were provided by Acas, others were identified by the research team. From an initial set of contacts, a snowball sampling method was used to identify further agencies for interview. The nature and scope of the project was explained to each participant, and a draft interview protocol was provided. Informed consent protocols were followed, in line with guidelines developed by the University of Leeds Ethics Committee, the institution where the Principal Investigator is based. In some cases, contact was established with interviewees at head office level, whilst in others, branch or establishment level contacts were made. Peak level bodies, including the REC, the Association of Labour Providers and the Chamber of Commerce were used to facilitate access to some agencies and client firms. For PublicCo2, the case information was obtained from workers using online forums and snowball sampling. It should be stressed, therefore that the sample is by no means a representative or

random sample of the agency industry, or of employers using agency labour. Rather, the snowball sampling technique allowed the researchers to identify agencies and users who were able to provide insights on the themes being covered in the interviews.

In each of the agency cases, interviews were conducted at branch level. In practice, this entailed interviews with the managing director, regional manager, branch manager, temporary recruitment consultant or contract manager. For the peak level and union interviews, these were conducted with national policy directors, head of research and managing directors (peak level interviews) and with representatives at regional level, or site organisers (unions).

The interviews were semi-structured in nature and gathered data on a number of key issues. In the case of agencies, the interviews covered:

- Background
- Contractual relationships with firms
- Responses to the regulations
- Evolution of relationships with firms
- Relationships with workers, unions
- Other issues

A more detailed interview schedule for agencies, with indicative themes and questions can be found in Appendix 1.

In the case of employers, the interviews covered:

- Background and contextual information
- Contractual relationships with agencies
- Responses to the regulations
- Challenges faced
- Changing relationships with agencies, workers and unions

A more detailed interview schedule, with indicative themes and questions can be found in Appendix 2.

For the peak level and union interviews, the schedules in appendices 1 and 2 were tailored to fit the scope of the organisation being interviewed, and included the additional themes identified in Appendices 3 and 4.

Interviews lasted between 30 minutes and 1.5 hours. Some interviewees were interviewed on multiple occasions, with the additional discussions used to clarify points from the first interview, or to cover additional themes, following preliminary analysis of the data. Some interviews were conducted face to face and others by telephone or Skype. In some cases, interviews were recorded (with the permission of the respondent) and transcribed, but in most cases, recording was not possible and notes were made by the interviewee during and immediately after the interview. Interview data were analysed using an inductive, thematic approach, in which key themes were identified from the data. These primary data were supplemented with background data, gathered from publicly available sources, and from documentary evidence provided by interviewees. In the case of some respondents, a wide range of supplementary evidence was made available by interviewees, which formed an important part of the analysis. The research team assured agency and client firm respondents of anonymity, thus, the findings relating to client firms and agencies below exclude any details that would allow the identification of individual agencies or companies.

4. AGENCY RESPONSES TO THE AWR

Introduction

In this chapter, we will examine evidence from the 11 agencies interviewed and from industry body representatives, including the Recruitment and Employment Confederation and the Association of Labour Providers. The chapter begins by looking at preparations for the regulations. This is followed by a discussion of how agencies have responded to the specific requirements of the regulations. The chapter then moves on to look at changing contractual forms in the agency industry, including the rise of Swedish Derogation or PBA models. Finally, the chapter looks at the overall effects of the regulations, from the agency perspective.

Preparing for the regulations

For most of the agencies interviewed, there was broad consensus that they had done a lot of preparatory work for the regulations, and that as a result, their perceptions were that they were more geared up for the introduction of the regulations than clients (although see Chapter 5 for the client perspective). Part of this was due to the long lead time up to the introduction of the regulations. A number of the agencies had been actively involved in discussions and debate about the regulations with industry bodies such as the REC, and some had lobbied government directly about the issues. A number of the agencies interviewed indicated that they had been prepared for the regulations long before their introduction:

'We'd been expecting the regulations since 2008, and even though the way the regulations ended up changed from then, we knew roughly when comparability was going to comeit was on our radar for a long time'(Manager, Agency L)

'We started planning scenarios as soon as the guidance came out...trying to keep ourselves ahead of the competition and also to make sure we were covered'(Agency C).

In the lead up to the regulations, agencies had adopted a range of strategies to prepare themselves, their clients and their workers for the regulations. The strategies that agencies adopted towards clients are outlined first, and then those towards workers.

Seminars and briefings for clients were very common. In the year leading up to the regulations, these seminars were often quite two-way, and had an element of uncertainty, given that both clients and firms were still seeking to anticipate the precise effects of the regulations and the strategies they would pursue. One agency commented on a seminar they ran:

'there was a lot of what ifs and 'how about this approach?'. We had some slides and gave our take on the regs but until they (the regulations) came in we didn't know exactly what would happen'(Agency G).

All the agencies interviewed also availed themselves of legal advice. For larger agencies, this was typically done in-house, through specialist legal teams, and in a lot of cases specific legal briefings were prepared by head offices to ensure compliance with the regulations.

The REC and Acas were mentioned by a number of agencies as sources for guidance about the regulations. The REC 'Roadshows' and Regional Events series were used as a means of gathering advice and sharing information. Many had also used HR and personnel forums as a means of sharing knowledge. In short, as one agency put it 'there wasn't a shortage of information out there on the regulations'. However, the guidance about the regulations was described by one respondent as a 'moving target...the advice we got changed a lot as the picture become clearer about what was in scope and what wasn't'.

Most agencies contacted all their clients to inform them of their approach to the regulations. This was felt to be good practice, and showed a proactive and positive approach to engaging with the regulations. Others were motivated by compliance, and adopted a strategy which clearly indicated to clients how they, as an agency, were complying. At least part of this proactivity was motivated by a perceived lack of preparedness on the part of employers. Indeed, a number of agencies commented that preparedness of agencies for the Directive seemed to be much greater than that of employers. As one agency put it:

'communication with clients was 99% led by us. We sent out emails, we did briefings...we told clients what our approach was and what they were responsible for. Some did come to us with questions, but it was mostly us' (agency D)

This lack of awareness amongst some clients seemed to be around some of the specifics of the entitlements – what rights temps would have from day one, which rights from week 12. These were areas where agency recruitment consultants and managers were well placed to give advice and offer a clear interpretation, given that most had prepared for the regulations for a significant amount of time.

The one aspect of the regulations where client firms were more proactive was around seeking guidance on potential new staffing strategies. Agencies reported receiving a lot of enquires from clients about the Swedish Derogation. One agency argued that the Swedish Derogation was 'definitely client led....they have the power and have been pushing it, often on a take it or leave it basis' (Agency C). Another agency (not offering Derogation contracts) argued that this arrangement was being jointly pushed by agencies and clients, with the groundwork put in place, in the lead up to October 2011. Thus whilst many client firms may have lacked detailed knowledge about the specific provisions in the directive, the potential for new approaches to staffing created by the Swedish Derogation was something that a lot of companies were aware of.

Interestingly, agencies with long-term contractual relationships with client firms, such as preferred supplier, sole supplier and Framework Agreement suppliers, had a 'ready-made' framework through which to incorporate dialogue around the regulations – these 'formalised' relationships typically had to be modified to take account of the regulations, and as a result, discussion and agreement about what the regulations would mean for each party was inevitable, detailed, and formalised in a new set of contractual arrangements. In some cases, closer worker relationships with client firms had been forged prior to the regulations, as a result of discussions over joint approaches. In other cases, however, agencies and firms had adopted an approach whereby there was a clear division of responsibilities. One agency argued that many firms' lack of proactivity over the regulations had left them little alternative but to take the lead, which sometimes resulted in them setting out in stark terms what their (the agencies') responsibilities were, and what those of the client firm were.

For workers, there was, according to many of the agencies interviewed, very little knowledge about what the regulations meant for them. This is a theme that will recur in a number of sections of this chapter, and is an issue which is worth highlighting, in terms of the uneven distribution of power in the agency-client firm–worker triangle. Focusing here on the position prior to the regulations, agencies noted that they were often the ones to break the news to temps about what impact the regulations would have, particularly in terms of equal rights after 12 weeks. Many of the nuances of the regulations (particularly around issues such as the Swedish Derogation) were not picked up by temps. Indeed, some agencies were critical of other agencies, arguing that some were abdicating their responsibilities to inform temps of their new rights. Agencies become aware of this in the common situation where temps registered for work with multiple agencies. One agency manager noted:

'There was a lot of ignorance from temps about their rights....we spent a lot of time explaining to them what rights they had....other agencies just hadn't told them' (agency H)

Good practice here seemed to involve direct contact with temps, informing them of their new rights under the regulations. A number of agencies interviewed did this as a matter of routine during initial interviews with temps, or during catch up meetings with temps on their books (when workers came in to collect payslips for example). Nonetheless, agencies' perceptions were that practices varied considerably across the sector, and that workers often had a worrying lack of awareness of their rights as agency workers, and of the responsibilities of agencies and client firms for ensuring that they receive equal treatment. It was noted by a number of agencies that unions had had an important role to play in conveying information about the regulations, although some felt there was an undue focus in this information on the Swedish Derogation, and less focus on the rights agency workers would gain from day one. Union perspectives will be presented in more detail in chapter 5.

After the introduction of the regulations: ensuring compliance and challenges

Agencies were asked during interviews about the specific provisions in the regulations. Which of these had proved the most challenging to implement and how had they gone about ensuring compliance? Most agencies argued that ensuring compliance with the regulations had not been as problematic as they had anticipated, although the bureaucratic cost to them was significant. Later sections in the chapter will also point to some of the costs to agencies resulting from changes to the way that contracting was being arranged in the sector, and the reconfiguration of segments of the industry, particularly those using Derogation arrangements.

Most agencies had invested in, or updated existing computerised systems to ensure that compliance with the regulations could be monitored by them, and to provide an audit trail in the event of any grievances or disputes. There was recognition that the regulations provided clear guidance on a lot of aspects of the regulations, but that there were also 'grey areas' where the guidance indicated that it was likely that Tribunals would arbitrate. All agencies, without exception were able to draw up data on lengths of assignments, pay levels etc. and the updating of systems typically involved putting in place electronic triggers when certain regulatory driven milestones were reached, for example 12 weeks on an assignment. Systems also allowed agencies to keep track of workers with short breaks in assignments, and to allow agencies to follow whether workers had worked on a number of occasions for the same firm. For comparator pay

data, agencies depended upon co-operation from client firms. Agencies were clear about their responsibilities for establishing comparators and keeping records of these comparisons (more detail is provided on this below). In short, the agencies interviewed felt that they were able to clearly deal with their responsibilities in terms of ensuring equal treatment over pay. For the agencies interviewed, between 10% and 50% of their temps went over the 12 week qualifying period, hence the responsibilities here were significant.

There were some aspects of the regulations which had proved challenging. One agency highlighted a case where one of their agency temps had worked for the same client firm through two different agencies (in a similar role), and had only become aware of this once the worker had passed 12 weeks of employment (albeit, there had been a break). The agency manager pointed to the difficulties of covering every working arrangement in the agency industry in the regulations, and the challenges that this created for individual agencies.

Some agencies reported difficulties interpreting the 'equal access to facilities' provisions. Agencies noted that *they* were clear on what equal access to facilities meant but that they had had debate over where the dividing line was between basic rights and enhanced facilities, for example one client had asked how points based systems for certain benefits, including car parking, would apply to temps – this had led to a discussion about whether this was a right for employees in the organisation. Access to vacancies had also proved challenging for some agencies, mostly due to interpretation of the regulations by client firms. The regulations were introduced during a period in which layoffs amongst regular employees was commonplace, with temps being used by many firms as a way of maintaining flexibility. Some client firms had raised with agencies that workers who had been laid off should have 'first rights' on vacancies, and agency staff had spent some time clarifying with clients the correct procedure to be followed to ensure temps had access rights.

The largest burden according to agencies was the bureaucratic cost. Estimates of the time spent ensuring compliance with the regulations varied a lot according to agency size – amongst those agencies able to place a figure on the cost, it was estimated to be between half a person day to two person days per week. Most had absorbed these costs into existing duties of personnel consultants – 'we have taken the hit here....there is a lot of paperwork and system compliance' said one agency manager. Few respondents felt that the cost of the regulations had been passed on in terms of higher margins, however, although this will be examined in more detail in section four below.

The other challenges around compliance were related to informing workers of their rights. As noted above, agencies perceived that workers had little awareness of their rights. The experience of one agency is worth examining in more detail, as the themes below were also noted by a number of other respondents. This agency highlighted how they had spent a lot of time on educating workers about what the regulations meant for them.

'We've had workers come from other agencies....they haven't been told anything. Some of them don't know that they are entitled to equal pay or when it kicks in' (agency H).

Without knowledge of rights, it was felt that agency workers were in a weak position to ensure that they were getting what they were entitled to. This agency pointed to its responsibilities to 'look after' its temps, and had developed an approach in which

workers were provided with detailed information up front about their rights and when elements of the regulations would be applicable to them. In some cases, workers had moved agencies, or registered with new agencies, due to dissatisfaction with the information they were receiving from other agencies, or when they became aware from co-workers and worker representatives in client firms that they were not receiving the benefits that they were entitled to under the AWR. It should be stressed that these comments are based on the perceptions of agencies towards other agencies, rather than actual examples amongst the agencies interviewed of non-compliance with the regulations.

Competitive strategies and the regulations: a reconfiguration of the agency industry?

Most of the agencies interviewed had adopted a proactive approach to the regulations, although as noted above, the rationale for that proactivity varied from agency to agency. For some, most of the activities undertaken around the regulations were done with the aim of ensuring compliance – this could be viewed as a minimalist approach to the regulations. For others, the regulations had provided an opportunity to engage positively with clients and workers, and a number of agencies pointed to Recruitment and Employment Confederation guidance around using the regulations to promote positive working relations. A theme which occurred across a number of interviews was the tensions between working in partnership with other agencies around the regulations (sharing information, trying to promote good practice, and developing regionally based or nationally based industry responses to the regulations) and the realities of competing with other agencies for client business. A number of agencies argued that the industry had evolved rapidly since the regulations, with new contracting forms (recognised in the regulations) emerging, and some established arrangements becoming more prominent. Agency managers perceived that some agencies had been able to adapt to this new regulatory environment better than others, due to their size, or the nature of their relationships with clients. Some smaller and regional agencies, for example, perceived that they had been ‘squeezed’ as a result of the regulations, with larger national and international agencies being able to work more effectively with clients to ensure the financial viability of some new contracting arrangements (such as the Swedish Derogation) which involved a redistribution of risk and changes to margins.

Others pointed to power imbalances in the industry, between agencies and client firms. Amongst most of the agencies interviewed, the perception was that the client held a greater degree of power around contracting arrangements, and that many agencies had been presented with a ‘take it or leave it’ ultimatum, when presented with new contracting arrangements.

Use of the Swedish Derogation by the agencies interviewed was not found. However, it is clear from the interviews that the Derogation is being used in segments of the industry, and two of the agencies interviewed were able to highlight how their competitive position had been affected by rivals who were using the Derogation. From these examples, it is possible to make some observations about where the Derogation is being used, how Derogation contracts work in practice, and the role played by agencies and client firms in promoting and embedding this new contractual form in the sector.

One agency (Agency J), operated in London in the supply of industrial temps. This agency, supplying between 150-300 temps per week, did not offer Derogation contracts. The view of the manager of the agency was that this provision, whilst in the Regulations,

was being used as a way to circumvent the equal pay element of the regulations. In the industrial sector, this had:

'changed things overnight – it's not a level playing field anymore'

Many competitor agencies in London, serving the industrial sector had begun to offer derogation based contracts, in which they employed temps directly. This, according to the agency manager, was being pushed by client firms, but agencies were also complicit in their promotion.

'clients are getting together and insisting on the Derogations...it's a zero cost strategy for them. They can push it onto agencies. But agencies are working with them on it too'

These contracts were becoming commonplace in industrial sectors, according to this manager, because of the large number of temps being supplied in this sector. Derogation contracts were dependent upon high-volume temporary supply, involving headcounts of sometimes hundreds of workers. Here, agency temps were being utilised on core tasks, on an ongoing basis, and the costs to the client of complying with the equal pay element of the regulations was potentially significant. Crucially, the ongoing supply of temps to firms in these arrangements, on a long-term basis was also critical to the viability of Derogation contracts – there was a strong possibility that the issue of paying workers between assignments would not occur, since temps were needed and used often for periods of months or years without breaks. Hence, under such arrangements, the significant risks for the agency associated with Derogation contracts (of guaranteeing some hours of work, and paying workers between assignments) were reduced. The gains from the derogation came for the firm in terms of a lower hourly pay rate for the temps being supplied (since the worker waived the right to equal pay with comparators within the client firm) and for the agency in terms of a higher margin (to cover the increased risks associated with these arrangements) along with the continued regular supply of temps in large numbers. For workers, whilst some benefits could be seen in terms of a direct employment relationship, these were far outweighed by the loss of comparability and equal treatment with workers in firms in which they were placed in a long term basis.

Agencies and firms in the industrial sector were also agreeing 'split' contracts, with derogation contracts being used for some workers within firms (a 'core' of temps, who would be used on a long term basis) and separate, more traditional, 'contract for service' arrangements being used for other temps, who were used on a short-term basis. This strategic segmentation of the agency workforce appears out of keeping with the goals of the AWR to improve terms and conditions for temps and provide them with equal treatment. As a manager in an industrial agency, the manager at one agency highlighted how temps had come to this agency after experiences at other temp firms where they were unaware of what their derogation contracts meant for them in practice.

'are they aware about what 'finding suitable work' for them means, and what sort of work they'll need to accept to get pay between assignments....I don't think so...many are signing up to these contracts with agencies without realising what they are signing away.'

The effects on business for this agency had been significant. Around 25-30% of their business had been lost since the AWR, as competitors had moved into offering derogation contracts.

Another agency (agency H) also reported competitors changing their strategies towards Derogation contracts. This agency was a regional based agency, involved in supply in industrial and low skilled work, alongside other areas of supply. The agency manager argued that the Derogation was being used as a 'loophole', with employers using it to avoid equal pay after 12 weeks. The perception was that growth of these arrangements was being driven more by agencies than firms particularly national agencies who had, *long prior* to the regulations, moved towards contracting arrangements where they employed their temps. Traditionally, agency workers had been employed on a contract for services, and were contracted by the agency to work for client firms. Some national agencies then adopted strategies in which workers were moved onto permanent contracts which allowed the agencies to (legitimately) introduce 'travel and subsistence' allowances via salary sacrifice. Whilst this typically gave workers a small increase in pay, agencies also made significant savings in national insurance contributions. This contracting strategy was outlined in detail in one of the cases in Forde and Slater (2011), often conducted through 'umbrella companies', but this approach was also adopted by some national and multinational agencies.

Once the Swedish Derogation came in, the perception of the manager at Agency H was that agencies who had been using the 'salary sacrifice model' had 'no alternative' but to move to Derogation contracts – their temps were already directly employed by the agency, so the Derogation had to become the model of choice for temps operating such arrangements.

As with Agency J above, it was felt that the gains were shared between agency and client under such arrangements, with little benefit for the worker. Indeed, for some workers, there was little element of choice, either because these were the only contracts being offered by the agency, or because the worker was unaware of the type of contract they were on at all. Alternatively, workers had been presented with a list of the benefits of the Derogation contract (pay between assignments, and employee status) without much knowledge of the risks. These risks were considerable, particularly in relation to the payment of pay between assignments. The agency manager perceived that temps were being made unreasonable offers of work, in order that some work was maintained for the temp to avoid pay between assignment provisions. The example given by Agency H was of one agency offering 12 hours work a week up to 30 miles or 90 minutes away. This meant a worker could be asked to commute a long distance for 2 hours work, six days a week, in order to maintain their eligibility to pay between assignments.

Conclusions: The effects of the regulations on agencies

Here, we present some of the main conclusions of the interviews with agencies, alongside summary views gathered from interviews with industry bodies.

Looking first at demand for temporary labour, overall, the agencies interviewed felt that the regulations had not had the effect expected by some that demand for temporary agency labour would reduce, as a result in rising costs associated with equal treatment provisions. Demand was thought to be buoyant for a number of reasons. Where temps were being used on a short-term basis, or in small numbers, the costs of the equal treatment provisions had been relatively small for the employer. In many cases, it was argued that disparities between temporary and directly employed workers were minimal, a point also made by the REC in interviews. In cases where larger numbers of temps were being used, or where temps were being used on a longer term basis, firms had in some cases looked to trim margins, or had looked to alternative contracting strategies as a means of transferring some of the risks associated with the regulations. Only in a few

cases did agencies suggest that employer demand had fallen – some client firms had looked at utilising alternative contract forms, such as casual workers, or had turned to using in-house people banks, which were not covered within the regulations.

The head of policy at the REC argued that where there was some reduction in use, it seemed to be the smaller agencies who were bearing the brunt of the changes. However, the REC view was that firms were continuing to see the value of temporary staffing, and that demand had not been hugely affected. Beyond this, one agency highlighted an increase in temp to permanent contracts, where workers were taken on directly by a client firm after a period of temping. This agency argued that firms were weighing up the costs of providing equal treatment and making a judgment close to the 12 week period to take more temps on a permanent basis, rather than continue with temp arrangements after this period. Temp to fixed-term contract arrangements were also becoming more commonplace as firms looked for what was termed a 'halfway house' between a temp contract, and taking on a worker on an open ended contract.

Turning next to costs, the interviews have revealed perceptions of the high bureaucratic costs of complying with the regulations. For the REC, this was one of the biggest effects, with the burden of tracking assignments for 12 week entitlements, for example, seen to be significant. It is important not to overstate this, though, as many agencies argued that their systems had been relatively straightforward to adapt, and that some processes had been put in place prior to the regulations.

One important effect of the regulations seems to be shifts in contractual forms in some parts of the agency industry, in particular in industrial and manufacturing sectors, transport, and in parts of retail, such as supermarkets. What seems clear from the agency interviews is that Derogation contracts are most likely to become embedded where large numbers of temps are being supplied on a long-term basis to firms – it is under such arrangements that agencies may be willing to accept the risks associated with PBA models, and where the issue of having to provide PBA is least likely to arise. The REC view was that Derogation contracts were not as widespread as had been reported, and they argued that these contracts were unlikely to take hold significantly, given the risks associated with them for agencies. They argued that these contracts were a legitimate response to the regulations and that in some circumstances agencies, firms and workers could all benefit from them. For the REC, the risks were seen to be primarily borne by the agency, and the REC argued that agencies needed to go into such contracts 'with open eyes' to ensure that they were clear that the requirements in derogation models were commercially viable. However, the evidence from this study casts some doubt that the benefits of these contracts are evenly distributed and found some evidence that workers bore a lot of the risks under such arrangements. Some agencies argued that these contracts were being promoted by client firms, who have the most to gain from moving temps onto employment contracts with agencies. Others argued that it is firms alongside agencies that are promoting the contracts. For workers, however, the benefits of these contracts are much less clear cut.

The research has also highlighted how long-term partnerships between agencies and firms have played a role in shaping responses to the regulations. This was something also highlighted by the REC, who highlighted the value of open dialogue between agencies and firms to ensure compliance and a proactive approach to the regulations. For some agencies interviewed, the regulations had provided the opportunity to develop closer working relationships with client firms, engaging in dialogue about the impact. Where long-term arrangements are in place, the formalised, contractual nature of these arrangements often provided the starting point for dialogue. This is an issue that was

also picked up in interviews with industry bodies. The REC noted that sometimes there had been reluctance amongst clients to share information for equal treatment purposes with their recruitment partners. This was especially problematic in 'tiered' relationships involving multiple suppliers working with a managed service firm or neutral vendor (see also REC, 2012)

5. EMPLOYER AND UNION RESPONSES TO THE AWR

Introduction

This chapter looks at employer and union responses to the regulations. It draws on four case studies of employers utilising agency temps. The cases shed light on a number of different forms of employers, across public and private sector, and including firms of varying sizes. The presentation of employer cases is followed by a brief discussion of three union strategies towards the regulations, drawn from interviews with unions and desk based analysis of union responses.

Case 1 – PublicCo1: Neutral vendor ‘takes the hassle’ of compliance with the regulations

PublicCo is a large public sector organisation providing a full range of community services... PublicCo1 utilises temps across most areas of its services. The spend on agency workers equates to 5 per cent of the total annual wage bill, a figure which seems broadly comparable to other similar organisations nationally who provide a similar range of public services. Overall, the AWR have had some effects on PublicCo1’s practice, but these effects were intimately tied up with austerity measures and public sector funding cuts as well as with the AWR. Nonetheless, the AWR had provided some impetus to broader strategic reviews of the use of agency temps at PublicCo1, although the assessment was that their use of temps had not fallen significantly since the introduction of the regulations.

PublicCo1 had been well prepared for the regulations, and had taken and given legal briefings about the regulations and their responsibilities. Historically, PublicCo1, like many large public sector organisations had contracted with a range of agencies, organised via Framework Agreements, which set out the broad terms and conditions under which agencies could contract with PublicCo1 over an extended period (typically 2-3 years). PublicCo1 had a relationship with a large number of agencies, and whilst the framework agreements set out broad conditions, there was considerable variation in practice, rates and the nature of relationships with individual agencies, which varied from department to department. PublicCo1 used temps across a wide range of services, including administrative and clerical roles, professional jobs, care assistants, IT, and specialist trades.

PublicCo1 had recently begun to work with a ‘neutral vendor’, who co-ordinated all their temporary staffing requirements. The reasons for this were twofold. PublicCo1 wanted to consolidate its use of staffing agencies, and this resulted in the neutral vendor contracting with individual agencies, who would ‘bid’ for work through the neutral vendor, as and when temporary staffing was needed in PublicCo1. Secondly, PublicCo1 wanted to cut the total spend on agency labour, and standardise pay rates for temps across a range of services. Cost savings were possible through the gainsharing arrangement that the neutral vendor operated. The neutral vendor was able to trim agency margins by operating auctions for work. . The neutral vendor was also able to assure PublicCo1 of robust systems of compliance and of performance indicators of agencies and workers.

As a result the introduction of the regulations posed relatively few problems for PublicCo1, as compliance become the responsibility of the neutral vendor. The neutral vendor put in place systems for triggering when workers were close to the 12 week

period where they would be entitled to equal pay, for example. The neutral vendor could also track whether temps had been placed in a number of different departments in PublicCo1, or whether the temp had worked for PublicCo1 through more than one agency. A key role of the neutral vendor was to manage the flow of information between agencies, the neutral vendor and the end user. The neutral vendor took on responsibility for vetting and screening of agency temps, and conducted regular audit checks of all the agencies who were working with PublicCo1.

The introduction of the regulations, alongside the use of a neutral vendor, meant that PublicCo1 worked much more distantly with individual agencies. . Rather PublicCo1 worked more closely with the neutral vendor, sharing information on their approach to the regulations, and seeking to predict the effects. The monitoring systems put in place by the neutral vendor provided a clear audit trail of compliance, and would help PublicCo1 achieve standardisation in its approach to temporary staffing and towards agency workers.

This is not to say that the AWR have not have an effect on practice at PublicCo1, but respondents argued that it was impossible to decouple the effects of the regulations from the broader cost cutting programmes and austerity measures being undertaken. PublicCo1 was looking at the strategic use of temps, and departments were being asked to think about the use of temps, particularly where the use extended over 12 weeks – was there a need for a temp after 12 weeks, and if so, would this be better organised via an open ended contract, given the costs associated with equal treatment?. All use of temps over 12 weeks required a separate justification, and cases over 12 weeks were also screened for redeployment opportunities.. There were still many circumstances in which agency labour was seen as more effective for PublicCo1, even after payment of the agency margins. .

Case 2 – ManufacturingCo: Consolidation of temps onto direct contracts, although the AWR only provides part of the stimulus

Manufacturing Co is an automotive manufacturer, with multiple assembly sites in the UK, employing over 20,000 workers in the UK. The company had experienced growth in employee numbers over 2010 and 2011. Agency temps comprised a significant proportion of the workforce at ManufacturingCo with up to 2,000 temps being used at peak periods. Given the length of product runs in the automotive sector, the use of agency temps was often long-term, and long term relationships had been built up with a number of agencies, including regional, national and multinational firms. The union recognised by ManufacturingCo were also closely involved in discussions over the use of agency workers. The case study write up here is based on interviews with union representatives.

The economic recession had had an impact upon the company's use of agency labour and over the 2008-2010 period, the company had worked with the trade union to produce a road map for the use of agency temps. This occurred long before the regulations, and reflected broader campaigning by the union to try and organise agency workers. In 2010, as numbers of direct employees continued to grow, and the use of agency workers peaked with the introduction of a new product line, the company and the union agreed a new approach to temporary staffing, whereby temps would receive 80 per cent of a directly employed workers' rate in their first two years of employment, with a commitment to moving long-term temps after this period onto open ended contracts. As the regulations approached, further negotiations resulted, in October 2011 of a new role description for temporary agency workers, so that temps would move gradually

towards equity in pay with directly employed staff, before being taken on in a directly employed role. . Between 2011 and 2012, it was estimated that 2,000 temps were moved onto open ended direct employment contracts with ManufacturingCo, as the company looked to consolidate those who had been on agency contracts for the longest periods.

For the union, this was seen as a 'significant achievement'. There was criticism that the regulations afforded agency workers with minimal protection, and the changes put in place at ManufacturingCo were not driven primarily by the introduction of the regulations. Rather, they reflected longer term dialogue between the company and the union over the strategic use of temps, in a climate in which temps were being used by the firm in large numbers, over a significant period of time. The negotiations had been successful, not because of the regulations, but rather because of the atypically high level of union membership amongst ManufacturingCo temps, and 'traditional' organising strategies operated by the union.

'most temps were members of the union, and we have union workplace reps who are temps...the successes we have enjoyed have not been down to the law, but due to traditional organisation of a contingent workforce.' (Regional union rep)

There was recognition that some workers were critical of the staggered approach towards equity in the firm and the length of time it took to reach parity through engagement on a permanent contract. The agency workforce had also become two tier. In late 2011, for example, many temps had been laid off with only a week's notice. Whilst significant numbers of temps had been consolidated on permanent contracts, many were still in insecure position and subject to the vagaries of changing demand, even in cases where they had been employed on relatively long contracts through agencies.

The union also had what was termed a 'decent' working dialogue with agencies supplying labour at the car plants. The union also pointed to ongoing dialogue with the company over the use of temps, which had long preceded the regulations. The establishment of new grades and roles for agency temps had allowed the company to develop a long-term strategy for the use of temps, in which parity in pay was achieved over the long-term, once these workers moved onto ongoing contracts. There was no recourse, for production workers, to the use of the Swedish Derogation following the introduction of the regulations. Some of the company's suppliers had begun to use the Swedish Derogation, and this had led to labour disputes at the plants, since these agency temps were seen to receive inferior treatment both to directly employed workers, and agency temps working in production roles, and covered under the arrangements above.

Case 3 – RetailCo

RetailCo has high street branches, and concessions within department stores, selling clothes. HR staff at the head office of the company were well prepared for the regulations, taking legal advice from specialist lawyers and in-house expertise. The effect of the regulations on the company was relatively minimal, and it had not affected their use of temps. Indeed, the use of temps by the company was low, and where they were used, this was for short term cover, and for specialist modelling work, arranged through modelling agencies. The company did not use agencies much within their retail stores, and where temps were used it was very unusual for them to reach 12 weeks of continuous employment. The use of modelling agencies provided a particular challenge to RetailCo, since workers were often employed on a self-employed basis through these

agencies, and the company needed to establish whether each worker was in scope of the regulations. Most temps used through modelling agencies were contracted on a very short-term basis, typically a day. The company had developed systems to ensure that holiday pay was paid to temps, as a percentage on top of the wages. In short, the company had not seen a huge effect from the regulations, although it was noted by the respondent that other retail firms, who were heavier users of agency labour had experienced more challenges.

Case 4 – PublicCo2: A move to in house temporary labour

PublicCo2 is a large public sector organisation involved in industrial transportation and mail delivery. It uses temporary agency staff to cope with peaks and troughs in demand, particularly seasonal variation. Traditionally, seasonal staff were employed on casual contracts, or via the use of private agencies. More recently, PublicCo2 set up an 'in-house agency', and outsourced the operation of this to a global staffing agency. This in house agency was used to meet demands for temporary staff. All applications for temporary staffing were handled by the in-house agency in 2011. However, from 2012 seasonal employees were recruited to work directly through PublicCo2 (but in some cases still recruited via a process involving the in house agency), with the in house agency run by the private agency used for shorter-term work. By 2012 the in house agency was recruiting both for direct employment with PublicCo2, and for work employed via the in house agency.

The timing of the establishment of the in house agency led to criticisms from some, particularly unions involved in the sector that the company was looking to circumvent the provisions of the regulations. With the temps' contract of employment being with an in-house agency, equal treatment provisions would not apply to these workers.

Evidence on the experience of work of those employed through the in house agency was obtained from interviews with workers. Workers temping through the in house agency were on zero hours contracts – the company texted or contacted workers by phone to explore their availability once an opportunity was available in PublicCo2. These workers were deployed alongside PublicCo2 staff, although terms and conditions of employment were very different. In house agency staff stated that there were disparities in break times between them and directly employed staff, and that pay rates were markedly different. There was also some physical separation of the workers, with the in house agency workers being directed by their own managers, and PublicCo2 employees being directed by PublicCo2 managers. Indeed, some respondents argued that the company sought to promote divisions amongst the two groups stating that managers from PublicCo2 'were not supposed to approach agency workers', even though in reality the dividing line between the two was blurred.

Union responses to the regulations

Union responses to the agency regulations reflect individual unions long-standing approaches towards agency temps, ranging from 'opposition', to acceptance, to positive engagement (see Heery, 2004), but most shared a broad collective view that the regulations do not provide enough protection for agency temps. Most unions perceived that the week twelve rights, whilst a step forward from the previous position left a lot of vulnerable agency workers relatively unprotected, and provided employers with some scope for adjustment of their strategies. For unions, ensuring protection for these workers was a priority, and the regulations had provided an impetus to many specific

campaigns focused around closing loopholes. Alongside this, new organising strategies had been used to try and collectively improve terms and conditions for temp workers, accepting that the regulations could only provide some degree of protection. The responses of three unions are considered below, drawn from interviews and publicly available sources.

For Unite, the Union had campaigned heavily for Day one equal treatment, and had passed a motion in 2011 for the legality of the Swedish Derogation to be tested. This campaigning around what were perceived to be loopholes in the regulations continued. Union representatives interviewed argued that a strategy of organising temps had been one which had given them some success in particular workplaces, albeit there remained a lot of temps represented by their union who were on inferior terms and conditions to directly employed workers. Where the union had achieved success in improving conditions for agency temps, this had tended to be quite specific conditions: where temp agency use was high (and long-term in nature), where union membership amongst agency temps was relatively high, and where the union had developed a dialogue around the use of agency workers with both management and with agency suppliers.

For the CWU, who had campaigned for many years for equal treatment for agency temps, the resultant regulations, which provided equal treatment for temps after twelve weeks were seen as a disappointment. Subsequent to the Directive, most attention had focused on the contractual changes experienced by many temps, and the perception that employers were exploiting workarounds in the regulations. The CWU was one of the first to develop long-term partnership arrangements with private agencies which *employed* temps, notably Manpower, with the first agreement dating back to the 1970s. These partnership arrangements continue today. But it was BT's recent arrangement with Manpower, and the latter's use of the Swedish Derogation (in which the agency is perceived by the union to be employing temps as a means of exploiting loopholes in the regulations) which has become the focus of the union's main campaign around the regulations. BT call centres had introduced PBA models, and since 2011, new starters in call centres had been required to sign PBA contracts, which exempted them from the right to pay equal to that of directly employed staff undertaking comparable roles.

The CWU was running a 'Close the Loopholes' campaign, against PBA contracts in particular, which it was felt enabled hirers and employment agencies to exploit agency workers. It was also raising the profile of agency issues amongst the CWU membership and seeking to mobilise agency union members, particularly those working through Manpower. Alongside this, there was a broader campaign to raise awareness of this at a political level, working with the TUC, and lobbying government. The union had developed strategies to inform agency workers of their rights, through email, leafleting and media campaigns, and through union (agency) representatives.

For Unison, like the two unions above again there was a perception that the regulations did not go far enough to protect agency workers, and the union had lobbied for stronger regulation of agency workers both before and after the introduction of the campaign. The strategy being pursued by the union to ensure protection was around educating, organising and negotiating over agency workers. Dealing with many large public sector employers, the focus of a lot of the unions' work was to police Framework Agreements and public sector use of agency labour. Where public sector organisations, such as hospitals had moved to in house agencies, for example, the union encouraged representatives to ensure that agency workers were protected, and to look to negotiate day one rights for temps. Alongside this, there were campaigns to inform temporary staff of their rights, since there was recognition that many workers were unaware of

what the regulations meant. This also involved organising agency workers in broader campaigns around low pay or respect at work, which could be connected to equal treatment. Much of the work conducted by the union around the regulations was in policing compliance.

Conclusions

This chapter has highlighted, from a small sample of cases, a range of union and employer responses to the regulations. For the employers in the case studies here, there was, in contrast to the views presented by agencies in Chapter 4, good awareness of the regulations, and compliance with the regulations had not been perceived to be particularly onerous for the employers interviewed. There was some evidence that the regulations had had an impact upon their use of agency labour, although these changes were difficult to decouple from the effects of economic conditions, and within the public sector cases, from the cost cutting exercises that many public sector organisations were compelled to undertake. New contracting forms were in evidence amongst some of the cases, such as PublicCo2's use of an in house agency, although the extent to which this change was driven by the regulations remains open to question. As in chapter 4, partnerships between agencies and firms were seen to be important to developing a joined up approach to dealing positively with the regulations. The chapter has also highlighted the important role of unions in policing the regulations and ensuring protection of agency temps. Much union activity around the regulations was focused on raising awareness of worker rights, and of highlighting perceived loopholes in the regulations, and the Swedish Derogation was the focus of a lot of campaigns. Alongside this, unions had adopted a range of organising strategies to try and improve terms and conditions for agency temps, and these strategies had, in some cases led to consolidation of agency temps on permanent contracts. The regulations may have provided some impetus to these organising strategies, but was not the primary factor behind their success.

6. CONCLUSIONS

This report has looked at employer and agency responses to the AWR. The introduction of the AWR in 2011 has resulted in a range of responses from employers, agencies and unions. Most agencies were well prepared for the regulations, and ensuring compliance with the regulations has perhaps not been as problematic as many agencies anticipated, although the bureaucratic cost of the regulations was highlighted by some as an issue. Agencies argued that they had been better prepared for the regulations than client firms. The regulations may have had some impact upon employers' use of agency labour, although it is difficult to disentangle effects here from those driven by changing economic conditions, particularly in the public sector.

What is clear is that new contracting forms between agencies, firms and agency temps have emerged as a result of the Directive. The use of the Swedish Derogation has occurred in some sectors, although the numbers of firms and agencies using this contracting model is still not clear. Large scale survey evidence in Chapter 2 provides some evidence to suggest the scale of these new contract forms, which may affect up to one in twelve agency temps. The agency interviews highlighted the use of the Derogation in industrial sectors in particular, and pointed to the circumstances in which the Derogation is being used by employers and agencies: where there is the long-term supply of large numbers of temps on a continuous basis. These circumstances are the ones where agencies may see some business benefit to PBA models, although the implications for workers seem to be largely negative. Whilst industry bodies continue to point to the legitimacy of these models, unions have highlighted how they are being used as a way round the regulations. The rapid growth of these forms immediately after the regulations casts doubt on whether they are being used in the spirit in which the regulations were intended.

A key issue emerging from the report is the imbalance of power in the agency-client-worker relationship, which responses to the regulations have highlighted. Workers were, according to many of the agency interviewees often unaware of their rights under the AWR. The panoply of contracting forms in the agency sector, and the growth of PBA and Derogation models, in particular, renders the relationship between agency temp, client firm and worker more complex than ever. Whilst under PBA models, the employment contract is clearly between agency and worker, agencies reported that temps were in some cases unaware of this, or that PBA models required them to sign away their equal treatment rights. Unions have played an important role in making agency workers aware of their rights under the AWR, and this is an area where more work could be done.

Much union activity around the regulations was focused on raising awareness of worker rights, and of highlighting perceived loopholes in the regulations, and the Swedish Derogation was the focus of a lot of campaigns. Alongside this, unions had adopted a range of organising strategies to try and improve terms and conditions for agency temps, and these strategies had, in some cases led to consolidation of agency temps on permanent contracts. The regulations may have provided some impetus to these organising strategies, but was not the primary factor behind their success.

More research is needed to explore the precise scale and scope of new contracting arrangements, including PBA/Derogation models of supply, to explore the implications of these arrangements for workers, agencies and client firms. This report was only able to shed light on Derogation contracts indirectly, through evidence from agency managers and personnel consultants. More direct analysis of PBA contracts, as they develop, will help to address the questions raised above about the implications of these contracts for each of the three parties. Further research into the implications of the AWR for workers, drawing directly on evidence from workers would also help shed further light on some of the issues above, particularly awareness of rights under the AWR.

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APPENDICES

APPENDIX 1 – SCHEDULE FOR TEMP AGENCY RESPONDENTS

1. BACKGROUND ON TEMP. AGENCY

- How many branches in UK?
- Probe as to whether global, national, regional or local agency
- At this branch:
 - How many workers are on assignment in an average week
 - How many are on the books?
 - What occupational areas/industrial activities do you supply workers for (try to get proportions, and most important areas of business)

2. RESPONSES TO THE REGS

General perceptions of the impact of the regulations on agencies

- Additional work on agencies/ additional costs to comply?
- Contractual obligations – has agency changed procedures? In what areas?
- How specifically have contracts issued to temps changed
- Establishing comparable workers – how and when is this done? By whom? How common are assignments of 12 or more weeks, and what is the process through which you establish comparability?
- Do you seek comparability with workers in client firms, or with other agency workers on your books?
- Where you have sought to establish comparability, what aspects of pay are covered in comparability (e.g. basic pay, bonuses, shift allowances, holiday pay). Which aspect have been most difficult to establish comparability, and which most straightforward?
- Workarounds – prior to regulations, agencies reported looking at workarounds to the equal treatment provisions – have these been seen in practice?
- SPECIFIC WORKAROUNDS
- Other aspects of the regulations – equal treatment in terms of holiday pay, access to facilities, access to vacancies – how do you ensure this takes place?
- Management of the ‘breaks between assignments regulations – how does this work
- Responsibilities of agencies – how does this work in practice? Are there areas where responsibilities of agency and firm are not clear? Any problems in practice and how have these been resolved?
- Health and safety requirements of the Directive
- Has your role in setting pay changed as a result of the Directive – are agencies taking more of a lead in setting pay? If so, why?
- Have margins been squeezed as a result of the Directive – why? Strategies used by agencies to maintain margins
- Overall demands for agency labour – has this increased? Decreased? As a result of the regulations? Is it longer-term assignments that are affected, as the 12 week rule kicks in? Or has overall demand changed? Particular occupations affected?
- Competition with other agencies? How have different agencies sought to position themselves to gain strategic advantage in response to the regs?
- Examples of agencies marketing themselves as ‘one stop solution’ to Regulations, including promotion of use of:

- Umbrella Companies
- Swedish Derogation?
- Move to 'in house agencies'
- Are these being pushed by companies, or by agencies or by both? Who benefits from them?
 - How common is this?

3. RELATIONSHIPS WITH FIRMS

- How have relationships changed as a result of the Directive? Closer relationships? Examples of joint work on compliance between HR managers in firms and agencies? Or clear division of responsibilities between the two?
- Has the form of contracts/relationships changed? More preferred supplier arrangements, larger contracts? Or less? Why?
- More on site-management as a way of managing and ensuring compliance?
- Where dedicated temp consultants are on site, how does division of responsibilities work?
- Temp to perm schemes – are these more commonplace, have they become more formalized? How have you ensured access to vacancies requirement is adhered to
- More of an audit trail between agency and firm?
- Jointly agreed solutions to Directive and how have these worked?
- Use of Framework Agreements in public sector – how have regulations impacted on thee. Are they defining how agencies will meet regulations?
- Use of Swedish derogation – are your clients pushing for this, as a condition of using your agency? Have you picked up new business in this way? How does the derogation work?

4. TRADE UNIONS/EMPLOYEE REPS

- What relationships do your agency have with unions? Within particular firms?
- How have you engaged with unions over the AWR?
- Role of unions in policing and implementing?
- Partnership agreements involving unions?
- Unions and Swedish derogation
- Other employee representative groups – at agency level? Firm level?

5. RELATIONSHIPS WITH WORKERS

- Have the regulations impacted upon relationships with workers – pay levels, likelihood of workers remaining with the agency for a long time, loyalty
- Has the 12 week rule reduced the use of 'permatemps' or not – is the Swedish derogation a way around this?
- Agency/labour provider as an employer?
- Different groups of workers using agencies/labour providers?

6. OTHER ISSUES

- Lobbying – role of your agency in lobbying?

APPENDIX 2 – INTERVIEW THEMES FOR EMPLOYERS;

- Introduction – firm size, sector, use of temps, reasons for use, typical length of contract with temp, changes
- Contracts – work with particular agencies? Long-terms contracts
- Regulations – how have you responded? Changing bureaucratic procedures? Contractual changes? Changes in pay
- Which elements of the Regulations have caused issues/have required changes?
- How have you ensured you meet the 12 week equal treatment
- Workarounds – Swedish Derogation?
- In house agencies?
- Raising pay for temps? Reducing pay for permanent workers?
- Who is pushing changes – you or agencies? Changing responsibilities? How is it managed in practice
- Relationships with agencies – see section 3 above
- Relationship with workers – see section 4 above, adapt to firms
- Relationships with Unions – see section 5
- Resolution of disputes/grievances over AWR

APPENDIX 3 – ADDITIONAL THEMES FOR AGENCY INDUSTRY BODY RESPONDENTS (REC, ALP)

- Background on the industry body and its role
- Its role in relation to the Directive (lobbying, its position, has this evolved or changed)
- Responses to the Regulations (see section 2 above)
- Agency and employer strategies including the use of Swedish Derogation, Umbrella Companies, In House Agencies, other solutions (see end of section 2 above)
- Relationships with firms
- Relationships with workers
- Relationships with unions
- Current agendas around the Directive, future scenarios, and their position

APPENDIX 4 – ADDITIONAL THEMES FOR UNION RESPONDENTS

- Background on the union and the representation of agency workers, historically and now
- Where are agency workers concentrated – sectors, firms
- Perceptions about effects of the Directive on employer and agency activity (see section 2 above) and use of agency workers
- Union activities and representation since the Directive – how has this changed?
- What issues have workers raised and how has the union responded?
- How have disputes over the Directive been managed/resolved?

- Evidence of specific campaigns
- Swedish Derogation, umbrella companies, in house agencies – perceptions of union towards these
- Partnerships with particular employers around agency workers – success/failure and factors that explain success/failure
- Relationship with Agency Industry bodies, and lobbying activities

