

ARTICLE 10 (3) OF DIRECTIVE 91/383/EEC ON IMPROVEMENTS IN THE SAFETY AND HEALTH AT WORK OF WORKERS WITH A FIXED-DURATION EMPLOYMENT RELATIONSHIP OR A TEMPORARY EMPLOYMENT RELATIONSHIP

Report by the United Kingdom on the 2nd five years of practical implementation of Directive 91/383/EEC

INTRODUCTION

How this report was produced

1. This 2nd Article 10 (3) report on the practical implementation of the Temporary Workers Directive (91/383/EEC) updates the first report submitted by the United Kingdom at the end of 1997. The report has been prepared on behalf of the Health and Safety Commission (HSC) by the Health and Safety Executive (HSE), which is the Government body responsible for ensuring that risks to people's health and safety from work activities in Great Britain are properly controlled.
2. In Northern Ireland (NI), this function is the responsibility of the Health and Safety Executive for Northern Ireland; the Employment and Training Board is responsible in Gibraltar. Both have been consulted on the report.
3. In accordance with the normal practice of monitoring the impact of legislation, and in preparation for the first Article 10 (3) report, HSC/E conducted an evaluation during 1996/97. For this second report, consultation across HSE has been undertaken to establish the current situation as regards temporary workers. The report contains information on updated law and guidance, various projects that have been undertaken by HSE and the *Revitalising Health and Safety* strategy. Inspection teams have also been consulted for experience in the field.

Social partners consulted and methods used

4. Before the revised regulations implementing the Directive came into force in 1999, a consultation document was published to allow consultation with social partners to take place. The consultation exercise meant interested parties could formally express their views on the issues raised by the proposed regulations. More formal consultation of social partners took place when HSC, a tripartite body on which employer and employee interests are represented, considered the revised regulations.
5. The Confederation of British Industry (CBI) and Trades Union Congress (TUC) were sent the report and their comments have been considered.

Relevant statistics

6. Table 1 shows the number of temporary employees (full - or part-time) in the UK over the period 1992 – 2001, which shows an increase of 430,000 (26%).

Table 1

Temporary employees in UK: by type of employment (Millions)

Year	Fixed period contract	Casual work	Agency temping	Seasonal	Other temporary work	All temporary employees
1992	0.59	0.27	0.08	0.08	0.2	1.22
1993	0.63	0.28	0.09	0.07	0.20	1.27
1994	0.75	0.31	0.11	0.08	0.15	1.41
1995	0.84	0.31	0.16	0.07	0.17	1.55
1996	0.82	0.32	0.20	0.08	0.16	1.59
1997	0.88	0.34	0.23	0.09	0.17	1.71
1998	0.85	0.30	0.25	0.08	0.18	1.67
1999	0.82	0.35	0.25	0.07	0.14	1.64
2000	0.80	0.32	0.26	0.07	0.20	1.65
2001	0.80	0.32	0.28	0.07	0.19	1.65

Source: Labour Force Survey, Office for National Statistics

This compares, in the same period, to the number of full-time employees rising from 16.56 to 18.1 million (9.3%), the number of part-time employees rising from 6.01 to 6.95 million (15.6%), and the number of self-employed fluctuating around 3 million. (Source: Labour Force Survey, Office for National Statistics)

7. Table 2 shows the number of businesses, and share of employment and turnover by size in the UK in 2001. The total number of businesses in the UK was 3,808,000. Of these, 99.1% were small businesses – employing less than 50 people – and accounted for 37% of all employment. 89% of businesses employ less than five people, and account for 19% of all employment.

Table 2

Size (number of employees)	Number of Businesses 2001	Share of Total Businesses	Share of Total Employment
	('000)	(%)	(%)
0-4	3385	89.0	19.0
5-9	210	5.5	5.5
10-19	118	3.1	6.0
20-49	58	1.5	6.5
50-99	19	0.5	4.9
100-499	14	0.3	10.8
500+	4	0.1	47.3
Total	3808	100	100

Source: Small Business Service

8. Due to the general scope of the Directive, and because accidents to temporary employees are not recorded separately, it is not possible to identify the specific impact on accidents and ill-health of the measures taken to implement the Directive. However, during the period 1997/98 to 2001/02(p)¹ the number of fatal injuries to workers decreased from 274 to 249, with the rate² decreasing from 1.0 to 0.9; the number of major injuries to workers decreased from 30,002 to 28,383, with the rate² decreasing from 113.8 to 99.8; and the number of injuries resulting in over three days absence decreased from 135,773 to 127,979, with the rate² decreasing from 514.8 to 450.

(Source: Health and Safety Statistics Highlights 2001/02, HSE Books)

9. In the first practical implementation report, the UK reported that an independent study was in the process of being compiled on workplace injured and workplace trends. The report was prepared by the Institute for Employment Research (IER)³. Table 3 shows the rate of all workplace injury by job tenure with employer (rate of injury from the report by IER³).

Table 3

Job Tenure	Annualised Rate of all Workplace Injury (per 100,000 Workers)
Less than 6 months	11400
6-11 months	5600
12 months to less 5 years	4200
5 years or more	3500

Analysis of the research conducted to produce the report indicated that whether a worker is employed on a temporary or permanent basis has no significant influence on the risk of workplace injury. However, as table 3 shows, there is a higher rate of risk and injury to new workers and, because nearly 3 in 5 (57%) of temporary workers have been with their employer for less than 12 months, the risks to temporary workers are associated with the high risks to workers new to their employer.

LEGAL IMPACT

10. The Directive applies to employment relationships governed by a fixed-duration contract of employment and to temporary employment relationships between a temporary employment business, which is the employer, and the worker, where the latter is assigned to work for and under the control of someone else.

11. In the UK such employment relationships, although temporary in nature, confer the same rights and protections for employees and the same responsibilities on employers, by virtue of section two of the Health and Safety at Work etc Act 1974 (HSW Act), as do permanent employment relationships.

¹ p = provisional

² per 100,000 workers

³ 'Workplace injuries and workforce trends' (281/01), prepared by Institute for Employment Research for HSE

12. Where the Directive introduced measures which prescribe the provision of specified information to workers with temporary employment relationships, additional legal requirements were included in the Management of Health and Safety at Work Regulations (MHSWR) 1992, which came into force on 1 January 1993. MHSWR supplements the general duties in the HSW Act and provide a more explicit framework for the management of health and safety, through assessment of risk and identification of the preventative and protective measures needed to control the risks properly, and making arrangements to manage the measures using competent assistance where necessary. Similar regulations apply in Northern Ireland.

13. In 1999 MHSWR was revised to address three main issues:

- (i) principles used when implementing preventive and protective measures
- (ii) using competent employees as health and safety representatives
- (iii) employers required to arrange contacts with external services, especially with regards first aid, emergency medical care and rescue work

14. These changes affect the employment conditions of all workers, including temporary workers.

PUBLICISING THE NEW LEGISLATION

Action by Government, employers and workers

15. HSE issued a press release on 23 December 1999 setting out what the main changes to the Regulations were. The press release was circulated to national and local press, specialist press, employer and employee representative bodies, Parliament and was also posted on HSE's website.

16. HSE revised the 'Essentials of health and safety at work' guidance in 1999, updating guidance and good tips for small businesses on a range of health and safety issues, including: organisation; premises; plant and machinery; harmful substances; procedures; protective equipment (PPE); and training.

17. In October 2001 HSE produced 'health and safety training: what you need to know', which superseded 'five steps to information, instruction and training'. This leaflet explains the importance of health and safety training to owners and managers of businesses. It gives advice on who may need training, what form the training may take and how to organise it. In April 2002 the good practice document 'five steps to risk assessment' was also revised by HSE, providing updated guidance for employers and self employed people to assess risks in the workplace. It is aimed at firms in the commercial, service and light industrial sectors.

Provision of technical/legal assistance to undertakings

18. To assist employers in interpreting the revised Regulations, the Management of Health and Safety at Work Approved Code of Practice (ACoP) and guidance was revised in March 2000. It provides guidance on the application of MHSWR 1999 in all

areas to which they apply, including construction. The revised publication specifically addresses persons working in host employers' undertakings and temporary workers.

19. HSE issued a press release on 16 March 2000 setting out in more detail how the amended Regulations had changed the duties on employers, and that the ACoP had been updated to take account of the changes and would be published at the end of March 2000. The press release was circulated to national and local press, specialist press, employer and employee representative bodies, Parliament and was also posted on HSE's website.

Other measures

20. In addition to the confidential national telephone enquiry service that was introduced in 1996, HSE Infoline, HSE can now also be contacted by employers, employees and the public via email and by submitting an on-line enquiry form from the HSE website.

Assessment of the efforts made

21. HSE invites comments from users on the usefulness of its guidance, and has an established system for periodically reviewing its publications to ensure these are up-to-date and relevant.

SMALL AND MEDIUM SIZED FIRMS (SMEs)

Action specifically geared to SMEs

22. HSE publishes various industry specific advice, as well as more general publications, aimed at small firms, which are designed to assist them in complying with health and safety requirements. These are targetted at those employing less than 50 people.

23. HSE's website includes a page, last updated in May 2002, dedicated to assisting small businesses. The page brings together information particularly relevant to new small businesses, including publications introducing health and safety requirements, and is designed to develop good working practices and prevent accidents and work-related ill health from happening in small businesses.

24. HSE's website also includes a page which holds electronic versions of all free leaflets that have been published. The page is designed so that users of the site can access information (i) applicable to their industry sector, (ii) about a specific hazard, and (iii) about best practice. The section on small firms includes leaflets on preparing a health and safety policy document and a toolkit for the smaller construction contractor.

25. In February 2002 HSE launched an awareness raising campaign to promote construction health and safety, targeting smaller construction firms and the self-employed in order to reduce deaths, injuries and ill health. The campaign included national and regional press coverage and was led by HSC's Construction Industry

Advisory Committee (CONIAC), supported by 'Working Well Together' (WWT). WWT is a long-running campaign launched in 1999 to improve construction health and safety that has commitment from companies, industry bodies and employer and employee representatives.

Reduction of administrative, financial and legal constraints

26. Article 118A of the Treaty provides that Directives shall avoid imposing administrative, financial and legal constraints in a way that would hold back the creation and development of SMEs. In addition, Article 9.2 of the Framework Directive (89/391/EEC) allows Member States to define, by reference to their activities and size, the obligations to be met by different categories of undertaking with regard to documentation.

27. Where possible, opportunities have been taken to help small businesses comply with their duties without becoming enmeshed in fine technical or legal detail by following straightforward guidance (see paras 22-25).

Assessment of level of application

28. The regulations that implement the Directive apply to all businesses. The only shortfall in level of application arises through lack of awareness, which was backed up by the evaluation survey of MHSWR carried out in 1996/7. The survey found that small organisations were less aware of the Regulations, including the provisions relating to temporary workers.

29. The information in paragraphs 22-25 shows how HSE is developing systems which will assist in reaching SMEs more effectively, addressing this problem by providing information and guidance to improve health and safety awareness.

30. Following on from the survey conducted by HSE and Local Authority (LA) inspectors in 1996, HSE's Field Operations Directorate (FOD) and Local Authority Unit (LAU) were asked about employers' and workers' views of MHSWR. Since 1996 contacts with employers and workers have not identified a problem with MHSWR in respect of temporary workers.

Specific problems

31. No specific problems have been reported regarding SMEs. Paragraphs 22-25 highlight action that HSE has undertaken to ensure SMEs have access to health and safety information.

MONITORING OF IMPLEMENTATION

Bodies responsible for monitoring implementation

32. HSC and HSE are statutory bodies whose mission is to ensure that risks to people's health and safety from work activities are properly controlled - this includes the health and safety of non-employees, including the general public. HSC is

responsible for advising the Government on implementation of health and safety standards including those in the Temporary Workers Directive. HSE advises and assists HSC and also has day-to-day responsibility for enforcing health and safety legislation under general guidance from HSC. LAs also have responsibilities for enforcing health and safety law, which they carry out alongside their other responsibilities - eg for public health.

33. Implementation of health and safety requirements by employers and other duty-holders is monitored by the appropriate enforcing authority. HSE has responsibility for securing compliance in over 540,000 higher risk establishments, such as factories, farms, chemical and power plants, and also numerous transitory work sites (eg construction sites and fairgrounds), involving around 13.2 million working people. LAs enforce health and safety law in around 1.25 million establishments, mainly in the lower risk sectors (eg services and leisure), involving some 8.5 million working people. Similar enforcement arrangements apply in Northern Ireland.

Methods used for monitoring

34. Our approach is to target inspection and enforcement effort at those activities that present the greatest risk. This means delivering a programme of in-depth inspections that require more focus on management of health and safety and on issues raised by more complex health and safety law. At the same time we are using a range of other regulatory techniques to keep up workplace contacts to secure compliance and to target appropriate help and guidance.

35. HSE and LA inspectors have legal powers to enter premises without warning and carry out inspections. Visits may be made in this way (as part of planned programmes of inspection); in response to requests for advice; or in, response to complaints.

36. Whether or not enforcement action is taken will depend on the facts in each case. MHSWR is enforced in the same way as other regulations made under the HSW Act. It is likely that in most cases inspectors would offer advice and assistance to employers before contemplating enforcement action. Inspectors will consider the position of temporary workers if this is a relevant issue. Formal enforcement action will be considered where:

- (i) there is a significant risk of ill-health or injury;
- (ii) employers appear deliberately obdurate and unwilling to recognise their responsibilities; and
- (iii) standards of compliance are low.

37. Enforcement of health and safety legislation - including MHSWR - is informed by the principles of:

- (i) proportionality in applying the law and securing compliance, i.e. action by enforcing authorities should be proportionate to any risks to health and safety and to the seriousness of any breach of legal requirements;
- (ii) consistency of approach - ie, there should be a similar approach in similar circumstances to achieve similar ends;

- (iii) targeting of enforcement action - ie, visits are targeted on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and the person responsible for creating the risk should be held to account for it;
- (iv) transparency about how the regulator operates - ie, duty holders should be clear about what they have to do and what they should expect from enforcing authorities.

38. Enforcing authorities must use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can often promote health and safety more effectively but, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate. Prosecution is more likely if:

- (i) there is a significant risk to health and safety, either because several people are at risk, or because the risk is considerable;
- (ii) good practice has been ignored;
- (iii) an inspector's previous advice has been ignored.

Changes in inspectorate practice

39. The Temporary Workers Directive has been implemented in Great Britain mainly by regulations made under the long-established HSW Act 1974, and which are enforced in the same way as other regulations made under that Act. No significant changes in inspectorate practice in the United Kingdom were necessary, therefore, to cope with the new Regulations.

Inspector training necessary for the new legislation

40. Basic training on the management of health and safety is provided as part of the training programme for new HSE field staff. Guidance was produced in January 2000 for all inspectors in light of the revised 1999 Regulations.

Problems encountered in monitoring implementation

41. No special problems have been encountered.

ASSESSMENT OF EFFECTIVENESS

Methods used to evaluate effectiveness

42. The effectiveness of implementation of the Directive since 1997 was evaluated through contact with all parts of HSE with an interest, NI, Gibraltar and TUC and CBI. Contact was made with HSE's FOD and LAU, following on from the survey conducted in 1996. Since 1996 inspection contacts with employers have not identified a problem with MHSWR in respect of temporary workers.

43. HSE's Infoline was also contacted to get information on the number of queries received on the regulations. Infoline received 3876 general queries on MHSWR and

7628 specifically regarding risk assessments. No queries about temporary workers were identified.

44. As the world of work becomes far more diverse and as part of a wider programme of work, in line with HSC's *Revitalising Health and Safety Strategy Statement* (specifically Action Point 16), HSE has been considering whether current health and safety law is still valid in terms of offering protection to employees with atypical work patterns.

45. HSC/E have concluded from this work that current law does still offer protection to all those involved in non-domestic work, including atypical workers. In developing any proposal for new or amending legislation, HSE policy staff consider the impact it is likely to have on people with atypical work patterns. They make sure that responsibilities for the worker's health and safety (and any practical solutions and advice on good practice) are addressed and made clear, and covered in supporting guidance. Organisations representing the interests of atypical groups of workers are also included in public consultation exercises.

SUMMING-UP

Positive aspects of experience of practical implementation

46. The general approach to management of health and safety and the need for provision of information, instruction and training is generally understood and accepted by the business community. Employers and employees are, in general, implementing the requirements of MHSWR. Overall, the Regulations have proved a success in terms of improving work practices and changing attitudes to risk control.

47. HSE's operational contacts with employers and workers have not identified a problem with MHSWR in respect of temporary workers.

OUTLOOK

New priorities in the field

48. HSC is publicly committed to ensuring the approach to health and safety regulation remains relevant for the changing world of work. This is reflected in:

- HSC's *Revitalising Health and Safety Strategy Statement* (specifically Action Point 16), published June 2000;
- the *Securing Health Together* strategy;
- HSC's *Strategic Plan 2001/2004*; and
- in HSC's extensive programme of work to consider the implications, for health and safety, of changing patterns of employment.

49. As part of its routine operational and policy development activities, HSC/E continues to consider issues surrounding the changing world of work. HSC/E is also aware of the need to get the message across that existing legal duties do, in fact, offer protection to all groups of atypical workers; and continue to work to clarify the

position for employers, employees and the self-employed so that roles become clear and misconceptions are eliminated.

50. Work undertaken within HSC's Changing Patterns of Employment Programme has involved research into, and analysis of, known or perceived problems highlighted by the responses to HSC's 1996 Discussion Document "The health and safety implications of changing patterns of employment" (a number of key areas, including health and safety coverage for certain groups of atypical workers, were identified as warranting re-examination and HSE established the Programme to take this work forward). It has addressed a variety of issues relating to the "apparently self-employed", carers, homeworkers, contractorisation, mobile workers, agency workers and charity workers and volunteers.

51. Work done so far has concluded that current health and safety law does offer protection to all elements of the workforce, and therefore remains valid in today's changing world of work. Improvements will be made by clarifying to all stakeholders the current legal position regarding health and safety responsibilities for atypical workers. Many of the problems arise, not because there is lack of protection, but because stakeholders fail to recognise their responsibilities (deliberately or otherwise); employers are unclear on the extent of their duties where more than one employer has responsibilities; workers may not understand their rights; and because incorrect assumptions as to the employment status of individual workers are made by stakeholders.

52. HSC has already agreed to develop guidance on roles and responsibilities for the health and safety of agency workers and mobile workers; and a leaflet "*Use of contractors – a joint responsibility*" was published in September 2002. An HSE health and safety training guide for firms: "*Health and safety training: what you need to know*" and generic resource pack for health and safety trainers: "*Effective health and safety training: a trainer's resource pack*" were published in October 2001. The guide refers to the "apparently self-employed" and relevant activities in the pack highlight an employer's responsibility for atypical groups of workers (e.g. homeworkers, temporary and part-time staff) and contractors.