



# Supply Teachers

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## ADVICE AND GUIDANCE ON THE AGENCY WORKERS (AMENDMENT) REGULATIONS 2019

Following campaigning by the NASUWT and representations made by the Union, the Government's *Good Work Plan* will help to address an important concern raised by supply teacher members concerning the Swedish Derogation.

The NASUWT has highlighted the misuse of pay between assignments (PBA) contracts amongst supply teachers working through employment businesses.

As a result, the *Good Work Plan*, published by the Government in response to the Taylor Review of Modern Working Practices, provides for regulations to be introduced to abolish the use of PBA contracts, otherwise known as the Swedish Derogation.

The Agency Workers Regulations (AWR) were introduced in October 2011 to ensure that agency workers, such as supply teachers, are treated in the same way as directly employed workers carrying out the same work after a 12-week qualifying period, specifically the right to the same 'basic conditions' of pay as they would have received if they had been directly employed (*Regulation 5*).

However, under *Regulation 10* of the AWR, an agency worker is exempt from the right to equal pay. The Swedish Derogation allows an employment agency to pay less to a supply teacher who has qualified under the AWR for equal pay.

In order for this to happen, the agency must offer the supply teacher a permanent contract of employment that involves PBA when there is no work.

The regulations omit *Regulation 10* and thereby remove the ability of recruitment agencies to use the Swedish Derogation to avoid paying agency workers equal pay after 12 weeks.

In addition to this, the regulations introduce a legal obligation on recruitment agencies employing the Swedish Derogation to provide agency workers, such as supply teachers, with a 'written statement' (*section 4, paragraph [1]*) that makes it clear that with effect from 6 April 2020, they are:

- entitled to equal pay as per *Regulation 5* (once they have completed the 12-week qualification period); and
- the original Swedish Derogation or PBA contract no longer applies.

This must be provided to the agency worker no later than 30 April 2020, unless the contract has been terminated on or before that date (*section 4, paragraph [2]*).

In addition, the regulations enable an agency worker to pursue recourse to an Employment

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Tribunal if a recruitment agency has failed to provide them with a 'written statement'.

Furthermore, the regulations protect agency workers from being unfairly dismissed or subject to any detriment as a consequence of enforcing their rights under the draft regulations.

The legislation also requires the Secretary of State to review the changes made by the Regulations before 2025 and at least every five years subsequently (*section 9 paragraph (1) and paragraph [2]*).

The regulations come into force on 6 April 2020.

It is important that you are fully aware of the details of the draft regulations and how they impact on you, especially if working for an agency that currently uses the Swedish Derogation terms as part of its terms and conditions.

If you require further advice and guidance, please contact the NASUWT. Our specialist advisors can help with information and advice regarding any concerns or queries you may have about the terms and conditions being offered to you.

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**NASUWT**  
The Teachers' Union



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to us**

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