

Agency Workers Directive opt-out for UK contractors is looking increasingly likely

The Employment and Social Affairs Committee of the [European Parliament](#) voted almost unanimously and without amendment last week to accept the [Agency Workers Directive](#) (AWD) and to pave the way for its presentation to the entire parliament later this month.

This means that the UK retains its opt out for agency workers to start receiving the same benefits as permanent employees after 12 weeks, rather than on day one, which has been a major barrier to the AWD's adoption since 2002. But there is still no clear opt-out for UK contractors.

But the day before the crucial European vote, at a House of Commons event hosted by the Association of Technology Staffing Companies ([ATSCo](#)), Chairman of the influential House of Commons [Regulatory Reform Committee](#) [Andrew Miller MP](#) endorsed ATSCo's campaign to exclude contractors.

Contractors are different from 'agency workers'

Miller acknowledged the need to differentiate highly skilled, highly paid professional contractors and freelancers from low skilled, low paid vulnerable agency workers, for whose protection the AWD was originally designed.

And Miller's endorsement of a contractors' exclusion is of vital importance because as Chairman of the Regulatory Reform Committee, which is responsible for ensuring new UK regulations are introduced appropriately, he will be in a key position to influence how the UK legislation is developed.

According to Ann Swain, Chief Executive of ATSCo: "We are not out of the woods yet, but this is a huge step forward. It is deeply satisfying to get such an endorsement from one of the key legislators who will be working on the UK legislation."

How will the contractors' exclusion work?

According to ATSCo, there has never been an 'opt out' as such for contractors but the UK can choose how it interprets the directive when the time comes to adopt its provisions into UK law, and this includes the 12 week qualification period.

The definition of workers covered by the AWD is given as: "... workers with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction."

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Ann Swain, Chief Executive of ATSCo

According to Swain, the definition almost looks like it had [IR35 legislation](#) in mind, as the notional contract of employment between contractor and end-user client and [control](#) are two key factors that would bring a contractor inside IR35. Will this mean that contractors caught by IR35 will be covered by the directive and can expect employment rights?

The Department for Business, Enterprise and Regulatory Reform ([BERB](#)) is the ministry charged with implementing the directive and ATSCo is working hard lobbying BERR officials to ensure contractors are not included in the final legislation.

Swain is pleased with the progress in educating lawmakers about excluding contractors' from the final legislation: "ATSCo has always recognised the need to protect vulnerable workers, but there was a danger that the distinction between the highly skilled and highly paid workers placed by ATSCo members, and the kind of workers exploited by gangmasters, was not understood by EU and UK lawmakers.

"We have now made significant inroads into separating out professional staffing companies from the rest of the industry and convincing legislators that the 'one size fits all' approach to regulation is not appropriate."

Next steps

The entire European Parliament will have the opportunity to table amendments to the directive and then the vote, anticipated for around the 20th October will, assuming it is in favour, give the green light to Member States to start adopting the directive into national law.

The UK will then have three years to introduce legislation, but could decide to bring forward new laws as early as autumn 2009. However, according to Anne Fairweather, Head of Public Policy at the Recruitment and Employment Federation and John Kell, Head of Policy at the [Professional Contractors Group](#), it will be 2010 before new laws are in place.

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