

Title: Theme A: Terms of Employment Abolition of Pay between assignment contracts aka "Swedish Derogation".	Regulatory Impact Assessment (RIA)
	Date: 22/06/2024
Lead department or agency: Department for the Economy	Type of measure: Primary Legislation
	Stage: Initial
Other departments or agencies: N/A	Source of intervention: Domestic NI
	Contact details: goodjobsconsultation@economy-ni.gov.uk

Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum) There is currently a loophole in the Agency Workers Regulations (Northern Ireland) 2011. This loophole risks agency workers' rights to pay parity with other workers at the same place of work after a qualifying period of twelve weeks. Statutory intervention is required to remove it. The loophole was removed in GB in 2020 – we are seeking to replicate this change in NI.	
What are the policy objectives and the intended effects? (7 lines maximum) The aim of the policy is to remove the legal loophole and the ability of recruitment agencies to: <ul style="list-style-type: none"> continue to pay an agency worker at an inferior rate beyond the 12 week qualifying period; or structure the scheduling of workers' assignments so that they never qualify to receive any pay between assignments. Doing so will help to ensure that agency workers are not treated less favourably than was intended by the Agency Workers Regulations 2011 and it will ensure they receive pay parity after the 12 week qualifying period.	
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum) Option 1 – 'Do Nothing' - Maintain Status Quo – this would maintain the existing arrangements. Option 2 – Statutory intervention – revoke regulations 10 & 11 of the Agency Workers Regulations (Preferred Option). This would remove the pay between assignment contracts legal loophole, requiring all agency workers to be given the right to equal pay after the twelve-week qualifying period.	
Will the policy be reviewed? Yes	If applicable, set review date: Will form part of the EAI routine inspection process.

Cost of Preferred (or more likely) Option		
Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m
£0.002	Unknown.	N/A

Does Implementation go beyond minimum EU requirements?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Is this measure likely to impact on trade and investment?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Are any of these organisations in scope?	Micro Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Small Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	Medium Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Large Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: Kellie Sprott Date: 22-06-24.

ECONOMIC ASSESSMENT (Option 1)

Costs (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
	(constant price)	Years		
Low	£0	N/A	Optional	Optional
High	£0		Optional	Optional
Best Estimate	£0		£0	

Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines
 If the ‘do nothing’ approach is adopted the risk remains that some agency workers will not receive pay parity after their 12 week qualifying period. This will result in a continued personal cost to the agency worker. We do not have any evidence as to the scale of this problem in NI.

Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines
 If the ‘do nothing’ approach is adopted the risk remains that some agency workers will not receive pay parity after their 12 week qualifying period and therefore trust could be diminished/lost between the employer and agency worker.

Benefits (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
	(constant price)	Years		
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines
 Businesses continuing to utilise the legal loophole will continue to enjoy a reduced salary overhead than they should be paying. We do not have any evidence as to the scale of this problem in NI.

Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines
 None.

Key Assumptions, Sensitivities, Risks Maximum 5 lines
 N/A.

BUSINESS ASSESSMENT (Option 1)

Direct Impact on business (Equivalent Annual) £m			None
Costs:0	Benefits:0	Net:0	

Cross Border Issues (Option 1)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines
 There are no direct comparator provisions in RoI.
 This legal loophole is not in place in GB. The loophole was removed in 2020. We are seeking to replicate this position.

ECONOMIC ASSESSMENT (Option 2)

Costs (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
	(constant price)	Years		
Low	£0.0009	1	Optional	£,Optional
High	£0.004		Optional	Optional
Best Estimate	£0.002		£0.002	

Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines
 In 2024, there were 280¹ bodies registered in NI as undertaking employment related activities (i.e. recruitment agencies and other similar bodies). There is also an approximate 4000 people² registered with these bodies – i.e. work seekers/agency workers.

There is no information available on the number of these bodies using ‘Swedish Derogation’ clauses. Therefore, familiarisation costs have been calculated based on a low (10%), medium (25%), and high (50%) number of agencies affected, with a 1 hour period for a senior official (based on £30.49 hourly rate) to familiarise themselves with the changes in legislation.

The best estimate is the average of these figures.

Low (10%) – £853.72
 Medium (25%) – £2134.30
 High (50%) - £4268.60

Best estimate - £2418.87 - £0.002m

There may also be some additional operational costs to administer changes in contractual provisions and review those provisions for the approximate 4000 people on temporary agency contracts³. The cost for this has not been estimated as this will vary between agencies, depending on the number of clients registered with them, and the number of clients which have the pay between assignment/Swedish Derogation clauses in their contracts. As with the familiarisation costs above, it is anticipated that this figure would be very small/negligible.

Businesses who are utilising this legal loophole may see an increase in salary overheads when agency workers gain their right to pay parity after the 12 week qualifying period. We have no evidence of how widely used this legal loophole is in NI so cannot provide indicative figures for this potential increase in cost. Original anecdotal evidence was that it was not widely used in NI but later, further anecdotal evidence received via stakeholder engagement showed that it is being used by some businesses. No indication of the scale is known but as with the familiarisation costs above, it is anticipated that this figure would be very small/negligible.

Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines
 A potential increase in trust and productive working relationships between agency workers and their employer. If agency workers know they are being treated fairly and in line with current best practice, this can only help to improve how they feel about their work and their employer.

Benefits (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
	(constant price)	Years		
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines
 The key monetised benefit of removing this legal loophole is that agency workers, affected by the pay between assignment contracts provision, would now have the right to pay parity after 12 weeks with no risk of an unscrupulous employer utilising this legal loophole to prevent it.

¹ [NISRA website - Northern Ireland Business; Activity, Size, Location and Ownership, March 2024](#)

² [NISRA website - labour force survey May 2020](#)

³ Ibid. 2

Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines

A building of trust between agency workers and their employees if the agency workers know they are being treated fairly and in line with the intention of the Agency Workers Regulations.

Key Assumptions, Sensitivities, Risks Maximum 5 lines

N/A.

BUSINESS ASSESSMENT (Option 2)

Direct Impact on business (Equivalent Annual) £m				
Costs: £0.002	Benefits: Not known	Net: Not known		

Cross Border Issues (Option 2)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines

No direct comparator provisions in RoI.

This is the approach in GB. It is our intention to replicate their position.

Evidence Base

We have no evidence as to the prevalence of the use of the pay between assignment contracts in NI. Anecdotal evidence from the EAI inspectors indicates that it is not widely used but more recently received, also anecdotal evidence, during stakeholder engagement revealed that it is used by at least some employers. The scale of which is not known. What is known though is that the number of workers who are potentially affected by these types of contracts are small when compared to the number of people in the workforce.

In 2024, 280 businesses were registered as employment businesses/recruitment agencies. This is a very small number when compared with the total number of VAT and/or PAYE registered businesses operating in the north of Ireland which, as of 2024, is 80,045.

This means that employment businesses/recruitment agencies account for 0.35% of the local private sector economy. Additionally, 4000 workers were identified as being in agency temping roles. This equates to 0.5% of the total 801,800⁴ locally employed workforce.

Even though the number of people potentially affected by this legal loophole is very small we still think it is important to protect those who are vulnerable to it.

In 2019, “Good Work, A Review of Modern Working Practices” (The Matthew Taylor Report) recommended that the loophole in the Agency Workers Regulations in Britain which deals with “Pay Between Assignments Contracts” (sometimes known as the “Swedish Derogation”) should be closed. This was closed in Britain but remains in place here. We intend to replicate the GB provisions.

The cost of not doing so is a cost to agency workers subject to these provisions, sometimes without their knowledge, who are not receiving pay parity with their permanent counterparts. The only direct cost to business will be small familiarisation costs to some recruitment agencies and a potential cost to the unscrupulous employers who have been utilising the legal loophole and paying agency workers less than they should.

There is no information available on the number of these bodies using ‘Swedish Derogation’ clauses. Therefore, familiarisation costs have been calculated based on a low (10%), medium

⁴ [NISRA website - June 2024 labour market report](#)

(25%), and high (50%) number of agencies affected, with a 1 hour period for a senior official (based on £30.49 hourly rate) to familiarise themselves with the changes in legislation.

The best estimate is the average of these figures.

Low (10%) – £853.72

Medium (25%) – £2134.30

High (50%) - £4268.60

Best estimate - £2418.87 - £0.002m.

There may also be some additional operational costs to administer changes in contractual provisions and review those provisions for the approximate 4000 people on temporary agency contracts⁵. The cost for this has not been estimated as this will vary between agencies, depending on the number of clients registered with them, and the number of clients which have the pay between assignment/Swedish Derogation clauses in their contracts. As with the familiarisation costs indicated above, it is anticipated that this figure would be small/negligible.

Businesses who are utilising this legal loophole may see an increase in salary overheads when agency workers gain their right to pay parity after the 12 week qualifying period. We have no evidence of how widely used this legal loophole is in NI so cannot provide indicative figures for this potential increase in cost. As with the familiarisation costs above, it is anticipated that this figure would be small/negligible.

Abolition of the Swedish Derogation Small and Micro Business Impact Assessment

Preliminary Assessment

1. Do the regulations apply to small businesses or affect the business environment in which they operate?

Yes. The preferred option will apply to all recruitment agencies and businesses operating in the north of Ireland.

Employment businesses and recruitment agencies account for 9% of businesses within the 'Business administration and support services' Industry Group⁶. There are no figures available on the size of recruitment agencies, however, 93% of businesses in that Industry Group are small or micro businesses, which is supported by anecdotal EAI information which would suggest that employment businesses and agencies are predominately small or micro businesses.

2. What are the characteristics of small businesses likely to be affected?

Recruitment agencies and employment businesses.

In 2024 there were 280 registered employment businesses/recruitment agencies compared with 80,045 VAT and/or PAYE registered businesses operating in the north of Ireland. This means that employment businesses/recruitment agencies account for 0.35% of the local private sector economy.

The introduction of the preferred policy option will only impact on the recruitment agencies and businesses that are using the pay between assignment contracts provision.

⁵ [NISRA website - labour force survey May 2020](#)

⁶ [NISRA website - IDBR publication](#)

Consideration of alternative approaches

3. Examining whether alternative approaches (including, but not limited to, exemptions, simplified inspections and less frequent reporting) are appropriate for small and micro businesses:

No alternative approach available.

4. Examining whether small and micro businesses (those with fewer than 50 employees) can be given a complete or partial exemption from new rules, and whether alternative approaches are appropriate:

Not appropriate in this case. Recruitment agencies and businesses are predominantly small and micro sized businesses. If they are currently using pay between assignment contracts they will need to make the necessary changes to comply with the law if the legal loophole is removed.

5. Examining whether a lighter regulatory regime would be appropriate for small and microbusinesses.

Not appropriate in this case.

6. How serious is the problem the proposal seeks to address in relation to smaller businesses?

There are no definitive figures on the number of individuals currently affected by the pay between assignment provision in their contracts. There are also no definitive figures on the number of recruitment agencies and businesses who use this provision. That said – the impact of removing this legal loophole is still considered to be very small/negligible.

7. What changes will smaller businesses have to make to the way their business operates?

If the legal loophole is removed recruitment agencies and businesses will have to stop using pay between assignment contracts. This may require a change to the employment contract for some agency workers working under these provisions. It may also require a familiarisation with the new legislation once in place.

8. Is there likely to be a greater impact on the operations and performance of smaller business than others (It is normal for the impact of measures to bear more heavily on small businesses because they do not enjoy the economies of scale of larger businesses)?

Yes. There are no definitive figures on the size of recruitment agencies and employment businesses, however, other data sources (as indicated above) suggest that the vast majority of them would be small or micro businesses. It is unlikely the medium or large businesses will be impacted by the policy proposal.

As indicated above, the potential impact of the preferred option is small/negligible.

9. What are the likely approximate costs and benefits of the proposal for small business?

Small/negligible.

There is no information available on the number of these bodies using 'Swedish Derogation' clauses. Therefore, familiarisation costs have been calculated based on a low (10%), medium (25%), and high (50%) number of agencies affected, with a 1 hour period for a senior official (based on £30.49 hourly rate) to familiarise themselves with the changes in legislation.

The best estimate is the average of these figures.

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Medium (25%) – £2134.30

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Best estimate - £2418.87 - £0.002m.

10. Will exempting (either fully or partially) smaller businesses from the policy materially affect the potential benefits from the policy?

Cannot be done in this case. All recruitment agencies and businesses will be required to comply should the proposed changes be implemented.

11. Are there alternative approaches for smaller businesses, which would not materially affect the potential benefits from the policy?

No.

12. Is there likely to be a greater impact on the operations and performance of small and micro business than others?

Yes. As indicated above the majority of recruitment agencies and employment businesses are small or micro businesses. It is unlikely that this policy proposal will impact on medium or large businesses. However, as also indicated the potential impact of the preferred option is small/negligible.

Conclusion

This document examines the likely impact on small businesses.

The Department will invite views on the content of this small and micro business assessment during the consultation. Comments are welcomed in respect of any potential mitigations that could be provided for small and micro businesses.

Approved by: Kellie Sprott

Date: 22-06-24.