

EXPLANATORY MEMORANDUM TO

The Posted Workers (Agency Workers) Order (Northern Ireland) 2020

S.R. 2020 No. 251

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities act 1972 and Article 20(8) of the Industrial Tribunals (Northern Ireland) Order 1996 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The purpose of this Statutory Rule (SR) is to transpose the revised EU Posting of Workers Directive in Northern Ireland. The Posted Workers Directive establishes the employment rights and protections that apply to a worker when they are posted (sent temporarily to another Member State of the EU, an EEA country, or the UK).
- 2.2. This SR modifies the Agency Workers Regulations (Northern Ireland) 2011 (the 2011 Regulations) to require that a hirer that posts an agency worker to a Member State where the agency worker does not normally work will have to inform the employment agency of the Member State of the posting and the date at which the posting will commence.
- 2.3. This SR also modifies the 2011 Regulations and makes consequential amendments to the Industrial Tribunals (Northern Ireland) Order 1996 to enable an employment agency to bring a claim in an Industrial Tribunal against the hirer to recover any losses the employment agency may suffer as a result of any EU penalty for failure to comply with the provisions of the Directive or the Posted Workers Directive.
- 2.4. This SR is required to ensure that legislation in Northern Ireland is compliant with EU law during the transition period, as required under the terms of the Withdrawal Agreement.
- 2.5. The amendments in the SR will expire at the end of the Implementation Period, 31st December 2020.

3. Background

- 3.1. The revised Posting of Workers Directive sets out revised rights and regulations for the posting of workers, including issues of remuneration and agency workers.
- 3.2. Northern Ireland is already compliant with the revised Directive apart from an express obligation on a hirer to inform an agency of the posting of an agency worker. This part of the Directive aims to ensure that the agency is able to fulfil its part of obligations to the agency worker being posted where the hirer proposes to post the agency worker. This SR will ensure that Northern Ireland is compliant with this part of the Directive.

4. Consultation

- 4.1. Given the limited scope and impacts of the SR, a limited consultation was conducted with a small number of key stakeholders.

5. Equality Impact

- 5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1998 and an equality screening exercise undertaken. As the impact of this SR is believed to be small and is unlikely to have any negative impact on the nine equality categories set out in section 75, a full equality impact assessment was not considered necessary.

6. Regulatory Impact

- 6.1. There is no information available on the number of posted workers from other EU states working in Northern Ireland.
- 6.2. While there is a small number of workers from Northern Ireland who are posted workers working in other EU states, there is no specific data on the number of agency workers. Given the unavailability of data, a Regulatory Impact Assessment has not been submitted. However, it is anticipated that the overall impact will be negligible.
- 6.3. The legislation applies to activities that are undertaken by small businesses. No specific action is proposed to minimise regulatory burdens on small businesses as the impact is very minor and no further actions can be taken.

7. Financial Implications

- 7.1. It is anticipated that the financial implications would be negligible.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. This Statutory Rule complies with the provisions of Section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The SR will bring Northern Ireland into compliance with the Directive for the period of time that the UK will still have to comply with it. At the end of the Implementation Period, Northern Ireland will no longer be required to comply with the Directive as the regulation of posted workers only applies to EU Member States.

10. Parity or Replicatory Measure

- 10.1. In GB, the Department for Business, Energy and Industrial Strategy made the Posted Workers (Agency Workers) Regulations 2020 by negative resolution under section 2(2) of the European Communities Act 1972. The Regulations were made on 31st March and came into operation on 30th July 2020.

11. Additional Information

- 11.1. This Statutory Rule breaches the convention that rules subject to negative resolution should not come into operation until a minimum of 21 calendar days after laying. This is necessary to ensure that the relevant EU Directive which was due to be transposed by 30th July 2020 was not further delayed and to ensure compliance in advance of IP completion day