

**EXPLANATORY MEMORANDUM TO
THE AGENCY WORKERS REGULATIONS 2010**

2010 No. 93

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument implements EU Directive 2008/104/EC on temporary agency work (the Directive). Implementation will include provision based on the agreement reached on 20 May 2008 between the Confederation of British Industry (CBI) and the Trades Union Congress (TUC), that agency workers should receive equal treatment on basic working and employment conditions after 12 weeks in a given job. Member States have until 5 December 2011 to implement the Directive.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The aim of the Directive is to ensure the protection of temporary agency workers by applying the principle of equal treatment, as set out in Article 5. This provides that the basic working and employment conditions (duration of working time, overtime, breaks, rest periods, night work, holidays, public holidays and pay) of temporary agency workers should be, for the duration of their assignment at a hirer, at least those that would apply if they had been recruited directly by that hirer to occupy the same job. The Directive allows for a qualifying period before this equal treatment is applicable on the basis of an agreement between social partners at national level, and for other derogations and flexibilities such as for agency workers on permanent contracts of employment who are paid between assignments.

4.2 The Directive also provides other entitlements which aim to improve the situation for agency workers, for example, in terms of improved access to permanent employment and training. In order to liberalise the agency worker sector across the EU, the Directive also looks to address restrictions and prohibitions on agency work which exist in different Member States to see if they are justified.

4.3 A copy of the Transposition Note is attached. Implementation of the Directive will be by means of Regulations chiefly using powers under section 2(2) of the European Communities Act 1972 although certain aspects are being provided for in the same regulations using powers under the Health and Safety at Work etc Act 1974. There is no existing legislation in this area. (The Conduct of Employment Agencies and Employment Businesses Regulations 2003 govern the conduct of the private recruitment industry).

4.6 **Scrutiny history:** the then DTI submitted EM 15098/02 on 6 January 2003 on the European Commission's amended proposal for a Directive. The Commons European Scrutiny Committee gave clearance by letter on 21 May 2003 (report 22, Item no. 240661, session 02/03). Following further letters from BERR Ministers providing

updates on the latest position in relation to the Directive, and European Parliament agreement on the Directive on 22 October 2008, the House of Lords Select Committee of the EU released the proposal from scrutiny on 12 December 2008.

5. Territorial Extent and Application

5.1 The regulations extend to Great Britain. Separate regulations are to be made to implement the Directive in Northern Ireland. Therefore, they do not extend to Northern Ireland except in the case of those amendments to legislation which itself extends to Northern Ireland.

5.2 The regulations do not extend to Gibraltar, the Channel Isles or the Isle of Man.

6. European Convention on Human Rights

6.1 Pat McFadden, the Minister for Business, Innovation and Skills, has made the following statement regarding Human Rights:

“In my view the provisions of the Agency Workers Regulations 2010 are compatible with the Convention rights as defined in section 1 of the Human Rights Act 1998”.

7. Policy background

- *what is being done and why*

7.1 The agency sector is a crucial part of the UK labour market, which includes around 1.3m agency workers (about 5% of the work force), performing a wide variety of roles in a huge variety of organisations, and supplied through about 16,000 agencies. The sector provides many opportunities for workers, including an important route into permanent employment, as well as vital flexibility for many employers, such flexibility being particularly important as the economy emerges from the recession.

7.2 Since 1997, the Government has put in place a strengthened framework of core workplace rights. This includes agency workers, who now benefit from the right to a minimum wage, a right to paid holiday, and the right not to work more than 48 hours a week on average. The Fair Employment Enforcement Board, set up in 2008, continues to drive forward work in this area.

7.3 Against this background, the Government has always supported the underlying objectives of the Directive. But the Government also considers it crucial to ensure that greater fairness for agency workers is combined with maintenance of the valuable flexibility that the agency sector provides for both employers and workers. The Government was therefore pleased that key changes to the draft Directive were agreed which enable implementation on the basis of the CBI-TUC agreement. In accordance with that agreement, the regulations will give agency workers an entitlement to equal treatment in respect of basic working and employment conditions after 12 weeks in a given job.

7.4 The regulations will apply to “agency workers” (definition based on that used in the Working Time Regulations 1998) finding temporary work through a “temporary work agency” (definition based on existing statutory concept of an “employment business”). They will not extend to those who are genuinely self-employed, working

through their own limited liability company or employed on a managed service contract. The fact that a worker is contracted via an ‘umbrella company’ or other intermediary will not, however, result in his or her being outside the regulations’ scope.

7.5 In the interests of simplicity, the qualifying period will be 12 calendar weeks regardless of working pattern (e.g. part-time as opposed to full-time). A new qualifying period will only begin if there has been a new assignment with a different hirer, a 6 week break between assignments or a new assignment with the same hirer is in a substantively different role. To address the risk of abuse, there is a specific prohibition of patterns of assignments which are designed to prevent a worker acquiring equal treatment rights by moving him or her between a succession of substantively similar roles in the same organisation.

7.6 To reflect the particular status of agency workers, ‘pay’ is defined for the purposes of the Regulations as pay directly linked to the work undertaken by the agency worker. This will include not only the basic hourly (etc) rate, but also payment for overtime, shift allowances and similar, holiday pay and bonus payments related to the performance of the individual. But it will exclude matters that are not directly related to the work done by the agency worker, such as occupational pension contributions, occupational redundancy or sick pay, benefits in kind and profit-sharing schemes.

7.7 Agency workers will be able to make a claim to an Employment Tribunal in the event of an alleged breach of the Regulations. If the Tribunal upholds the claim, it will be able to compensate the worker for his or her loss, subject to a minimum award of two weeks’ pay for successful claims. In the event that a Tribunal finds there has been a pattern of assignments designed to circumvent equal treatment (paragraph 7.5 above), it will be able to make an additional award of up to £5,000. Liability will lie in the first instance with the agency, but the agency will have a reliable defence if it has taken reasonable steps to obtain necessary information from the hirer and then acted reasonably in determining what equal treatment should mean.

7.8 Consistent with the Directive’s requirements, the Regulations contain provisions on a range of further issues including equal access for agency workers to collective facilities (e.g. a staff canteen) and vacancies, the provision of information to workers’ representatives about the use of agency workers and the protection of pregnant women and new mothers who are agency workers. As allowed by the Directive, they also allow derogation from the principle of equal treatment on pay if the workers concerned are on permanent contracts of employment and continue to be paid between assignments (subject to a number of safeguards, including that the pay between assignments be at least 50% of that previously received and at least the National Minimum Wage).

7.9 A fuller explanation of the approach being taken on all the above issues can be found in the Government’s response to the recent consultation on the draft Regulations, which is being published in parallel to the making of the Regulations. Copies have been placed in the library of the House.

7.6 To provide all concerned with time to prepare for what is a significant change in the sector, the Regulations will come into force on 1 October 2011, the Common Commencement Date before the deadline for implementing the Directive.

8. Consultation outcome

8.1 Two public consultations have been carried out:

8.2 **BERR Consultation 8 May – 31 July 2009:** Implementation of the Agency Workers Directive – policy consultation.

8.3 **BIS Consultation 15 October 2009 – 11 December 2009:** Agency Workers Directive - Consultation on draft Regulations.

8.4 The first consultation sought views of all interested parties on the main policy questions requiring resolution before the Regulations were drafted. The Department held nine well attended consultation events, in London and the regions and 304 written responses were received. A full analysis of the responses was published with the consultation on draft Regulations on 15 October 2009, and is available on the Department’s website (www.bis.gov.uk/consultations).

8.5 The consultation demonstrated a wide range of views on almost all the issues discussed above. Agencies and hirers, whilst seeking clarity and certainty, were concerned generally that the Directive should not be “gold plated”, emphasising concerns about administrative costs and complexity. These respondents also stressed the importance of minimising constraints on the valuable flexibility provided by agency workers, which they argued would be particularly important as the economy emerges from recession.

8.6 Trades Unions, on the other hand, argued that the prime concern should be the protection of potentially vulnerable agency workers, seeking broad definitions of the Directive’s scope and the equal treatment rights to which agency workers should be entitled. These respondents also emphasised the need to prevent the unscrupulous from circumventing the Regulations in order to deprive workers of their rights.

8.7 The differences of perspective were similar in the responses to the second consultation on the draft Regulations. 91 responses were received, an analysis of which is provided in the Government’s response (www.bis.gov.uk/consultations). Respondents reiterated many of the points raised in response to the first consultation, as well commented on the effectiveness of the draft regulations in meeting the policy aims. Whilst the overall approach to implementation remains the same as set out in the Consultation, changes have been made eg to widen the definition of “pay” to include all performance related bonuses, strengthen anti-abuse measures to prevent avoidance of the Regulations by unscrupulous agencies and hirers, and remove the ability to derogate from the Directive in respect of collective and workforce agreements.

8.5 For the purposes of section 50(1AA) of the Health and Safety at Work Act, the following bodies were consulted:

- * Health and Safety Commission
- * Local Authorities Coordinators of Regulatory Services
- * Local Government Association
- * Welsh Local Government Association
- * Convention of Scottish Local Authorities
- * Maritime and Coastguard Agency
- * Civil Aviation Authority

9. Guidance

9.1 Guidance to accompany the regulations will be published at least 12 weeks before the Regulations come into force. Draft guidance on determining equal treatment

was included in the consultation on draft Regulations. The Department will liaise closely with interested parties in finalising all aspects of the Guidance

10. Impact

10.1 The impact on business, charities or voluntary bodies is set out in the attached Impact Assessment. Based on a 12 –week qualifying period, the overall annual cost to businesses, as hirers of agency workers, of providing equal treatment is estimated to be up to £1,516m. Estimated costs to agencies are up to £32m.

10.2 The impact on the public sector, as a hirer of agency workers, under the 12 – week Qualifying Period, is estimated to be up to £349m.

10.3 The total cost of providing equal treatment equates to about 0.3% of the total pay bill (0.6% for “Day One”).

10.4 Overall, the impact on Administrative Burdens is estimated to be an increase of £65m in 2005 prices.

11. Regulating small business

11.1 The Department has liaised closely with small business bodies throughout the consultation process. The Directive does not permit a differentiated approach on the basis of size of agency or hirer, but the Government has sought always to take account of the requirements of small firms in the development of its approach, in particular as regards administrative burdens.

11.2. Small business representatives will be invited to join a Working Group comprising a representative sample of stakeholders, to closely examine the practical implications of the Regulations and assist in particular with the development of Guidance. Careful consideration will be given to keeping duplication to a minimum, eg through the development of standardised templates for information collection and recording, and more generally the issues on which stakeholders have requested that additional guidance be provided.

12. Monitoring & review

12.1 Article 12 of the Directive requires that by 5 December 2013, the Commission, in consultation with Member States and social partners at Community level, will review the application of the Directive with a view to proposing, where appropriate, necessary amendments. Accordingly, the Government will review the impact of the legislation in order to meet this requirement

13. Contact: Iain Newton at the Department for Business, Innovation and Skills, tel: 020 7 215 0175 (email: iain.newton@bis.gsi.gov.uk.) can answer any queries regarding this instrument.

Summary: Intervention & Options

Department /Agency: BIS	Title: Impact Assessment of the European Parliament and of the Council Directive on working conditions for temporary agency workers	
Stage: Implementation	Version: Final	Date: January 2010
Related Publications: Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency workers		

Available to view or download at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:327:0009:0014:EN:PDF>

Contact for enquiries: Tim Harrison/Karen Wilshaw

Telephone: 020 7215 5799 /

What is the problem under consideration? Why is government intervention necessary?

The problem under consideration is that agency workers can work for the same hirer for lengthy periods and be well integrated into the hirer's business but may not receive the same basic working and employment conditions, such as pay and holidays, as the permanent employees who they are working alongside. They are still entitled to statutory entitlements but these may be below contractual entitlements of permanent employees. The Temporary Agency Workers Directive, hereafter referred to as "the Directive", aims to give agency workers equal treatment in terms of basic working and employment conditions as permanent staff. The Government proposes this legislation comes into force on 1st October 2011.

What are the policy objectives and the intended effects?

To provide agency workers with appropriate treatment which achieves the Government's twin objectives of flexibility for UK employers and fairness for workers. Equal treatment is defined as basic working and employment conditions that would apply to agency workers as if they had been recruited directly by the user undertaking "the hirer" to occupy the same job. The Directive does not change the agency worker's contractual relationship which remains with the employment business (agency).

What policy options have been considered? Please justify any preferred option.

Option 1: Do nothing – All EU Member States agreed the Directive so this option would result in infraction proceedings.

Option 2: The Directive assumes Day-1 equal treatment unless an exemption or derogation is used which still requires that agency workers have an adequate level of protection.

Option 3: An agreement was reached between the TUC and CBI - on 20 May 2008 - on how fairer treatment for agency workers in the UK should be promoted while not removing the important flexibility agency work can offer both employers and workers. Agreement was reached on key points, including the principle that after 12 weeks in a given job there will be an entitlement to equal treatment. This is the Government's preferred option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Article 12 of the Directive requires that the Commission will review the application of the Directive by 5 December 2013 - this will provide an opportunity for an early review of the costs/benefits.

Ministerial Sign-off For implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Pat McFadden (Minister for Business Innovation and Skills)

Pat McFadden

..... Date: 19 January 2010

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Summary: Analysis & Evidence

Policy Option: 3

Description: Implement the Directive based on a 12-week qualifying period for equal treatment in a given job

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The costs to private and public sector business represents about 0.3 per cent of the total UK pay bill. Private sector hirers face increased costs of up to £1,516m. Public sector hirers costs increase by up to £349m, including costs of enforcement. Costs to employment businesses estimated at £32m including up to £1m in enforcement costs. Enforcement costs to agency workers are up to £0.8m	
	One-off (Transition)	Yrs		
	£ 40 m	1		
	Average Annual Cost (excluding one-off)			
	£ 1,898m	10	Total Cost (PV)	£ 16,377m
Other key non-monetised costs by 'main affected groups' Hirers: negligible costs from access to amenities, pregnant worker requirements, bodies representing workers and I&C provisions (admin cost). Employment businesses: negligible cost from changes to pay between assignments.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Agency workers mostly affected by up to £1,057m in increased benefits due to wage and paid holiday increases. Similarly HM Exchequer / public sector hirers see benefits of up to £352m.	
	One-off	Yrs		
	£ 0 m	1		
	Average Annual Benefit (excluding one-off)			
	£ 1,409m	10	Total Benefit (PV)	£ £12,128m
Other key non-monetised benefits by 'main affected groups' Hirers may benefit from increased productivity amongst agency workers				

Key Assumptions/Sensitivities/Risks The evidence base outlines all assumptions used. Key assumptions include that 40% of agency workers are affected by qualifying period and that employment businesses can pass on 85-100% of higher wage and holiday costs to end users.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ -£4,249m	NET BENEFIT (NPV Best estimate) £ -4,249m
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What is the geographic coverage of the policy/option?		GB		
On what date will the policy be implemented?		1 October 2011		
Which organisation(s) will enforce the policy?		Tribunals Service		
What is the total annual cost of enforcement for these organisations?		£ 0.1m		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off, see Annex A for more details)	Micro £244	Small £2,493	Medium £18,650	Large £73,188
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase	£ 65m	Decrease	£ 0 m	Net	£ 65m
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Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

A: Strategic overview

Existing Government initiatives

Under existing employment rights, agency workers benefit from many of the same protections as permanent workers in the UK. All workers, including agency workers, are entitled to be paid at least the National Minimum Wage, are granted working time entitlements such as paid annual leave, a limit on the working week (unless signed an opt out) and regular rest breaks. Protection under anti-discrimination law, health and safety rules and statutory benefits such as maternity pay apply to agency workers and permanent workers alike. Evidence suggests agency workers are one group who have benefited from the increase in statutory leave entitlement to 28 days in April 2009. This Impact Assessment refers to and builds on work carried out for the 2002/03 Regulatory Impact Assessment on agency working¹.

Cost on business

This Impact Assessment presents the main costs to business and it is worth putting these into some context, £715 billion of wages and employer social contributions were paid across the UK economy in 2006 of which £568 billion was paid out in the private sector. The costs for private and public sector business are between 0.3 (using a 12-week qualifying period) to 0.6 per cent (Day-1) of the total pay bill.

Geographic scope

The consultation covers implementation in Great Britain, implementation in Northern Ireland will be subject to a separate consultation and accompanying Impact Assessment. According to most sources² around one per cent of UK agency workers are located in Northern Ireland. For simplicity, figures in this Impact Assessment are generally presented for the UK.

Administrative burdens

The implementation of the Directive would have administrative burdens cost implications; mainly for hirers and these are detailed in Section E.

B: The Issue

The Government's position on the Directive has been consistent. The Government supported the underlying principles of the Directive but sought changes which ensured that it met the twin objectives of flexibility for UK employers and fairness for workers. The Government undertook high level discussions during 2008 with the UK's national social partners – TUC and CBI – to try and find a way to break the deadlock on the Directive which had prevented agreement. On 20 May 2008 the CBI and TUC reached an agreement on how fairer treatment for agency workers in the UK should be promoted, including a commitment to equal treatment for agency workers after 12 weeks in a given job. The Directive was published in the Official Journal on 5 December 2008. EU Member States have until 5 December 2011 to adopt and publish laws, regulations and administrative provisions.

Consultation

The Government has carried out a two-stage consultation process for the implementation of the Directive. The first consultation '*Implementation of the Agency Workers Directive: a Consultation*'³ was published in May 2009 and focused on policy issues. This consultation closed on 31 July 2009 and a summary of the responses⁴ was published in October 2009⁵.

¹ See DTI Impact Assessments on the "Proposal for a Directive of the European Parliament and of the Council on Working Conditions for Temporary Agency Workers", April 2002 www.BIS.gov.uk/files/file11440.pdf and January 2003 www.BIS.gov.uk/files/file11496.pdf.

² ONS Labour Force Survey shows 1.4 per cent of agency workers in Northern Ireland and REC 'Census' gives 1.3 per cent.

³ www.berr.gov.uk/files/file51197.pdf

⁴ Over 300 responses were received for the first consultation

⁵ '*Agency Workers Directive Consultation: Summary of Responses to Consultation*', BIS, October 2009, www.berr.gov.uk/files/file53185.pdf

The second stage of the consultation process was launched in October 2009 with the publication of 'Implementation of the Agency Workers Directive: Consultations on draft regulations'⁶. The second consultation closed on 11 December 2009. Some 90 responses were received.

Impact assessments (IAs) were also published alongside each of the two consultations and this IA updates the earlier versions using both feedback from the latest consultation as well as additional analysis and data where available. This IA also includes at annex B an expanded Equality Impact Assessment.

C: Objectives

The Directive is aimed at establishing equal working and employment conditions that would apply to agency workers as if they had been recruited directly by the user undertaking "the hirer" to occupy the same job. The Directive will implement a 'floor' and not a 'ceiling' in terms of this equal treatment after 12 weeks in a given job. This will not cover notice pay, redundancy pay, benefits in kind (e.g. company car allowance, life insurance, discount for purchase of company products), financial participation schemes (e.g. profit sharing, subsidised share ownership) and occupational social security schemes, including occupational sick pay as well as occupational pensions.

The Directive also has the aim of liberalising the agency sector across the EU; this could bring benefits to UK employment businesses who wish to expand into the EU but have found existing laws in EU Member States prohibitive. The legislation will come into force on 1 October 2011.

D: Policy options

The IA accompanying the first consultation carried out in May 2009 set out 3 options for the implementation of the Agency Workers Directive. These compared the costs and benefits of two scenarios for implementing the Directive - based either on a day-1 qualifying period or a 12-week qualifying period – against the do nothing option:

Option 1:

Do nothing – as the Directive has been agreed, all EU Member States will have to implement it by 5 December 2011. Doing nothing would result in infraction proceedings.

Option 2:

Implement the Directive, based on Day-1 equal treatment in a given job (0 weeks qualifying period).

Option 3:

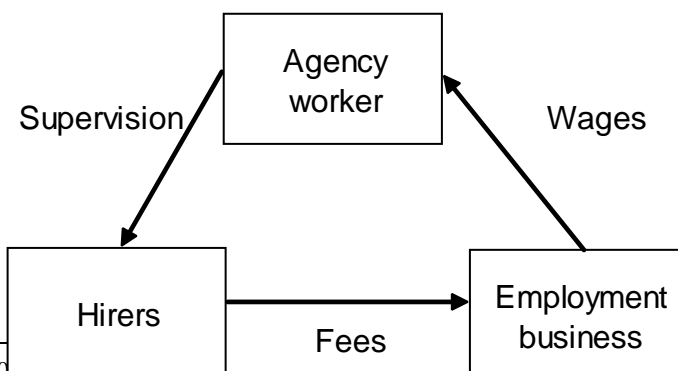
Implement the Directive based on a 12-week qualifying period for equal treatment in a given job.

The Government's preferred option is implementation under the 12-week qualifying period. This reflects the joint CBI-TUC agreement in May 2008 which it is felt meets the twin objectives of flexibility for UK employers and fairness for workers. The costs and benefits presented below are therefore based on Option 3.

E: Analysis of Options

The Directive is established on the basis agency workers have a triangular employment relationship. This involves the employment business or 'agency' placing them on assignment with a user undertaking or hirer, which employs them temporarily while paying the employment business a fee who in turn remunerates the agency worker, as illustrated in figure 1 below.

Figure 1: 'Basic' triangular employment relationship



⁶ www.berr.gov.uk/files/file530

The three parties in the above figure represent the main affected groups of the Directive and separate cost-benefit analysis is provided for each. A further split between the private and public sector (incl. HM Exchequer) is made. Generally the equal treatment provision created by the Directive is a benefit transfer to the agency worker resulting in a cost which has to be shared by the employment business and hirer. Uncertainty in the exact cost is presented as a range. For simplicity the maximum cost to the hirer is generally presented rather than the maximum cost to the employment business.

Static versus dynamic effects

The cost-benefit analysis is developed in two ways:

- First, we examine the potential change in costs and benefits likely to occur assuming the characteristics of the industry stay the same (i.e. number of agency workers on assignment, assignment lengths, etc.). This is a *static* analysis and is the primary focus of this impact assessment.
- Second, we consider how implementation of the Directive might impact on behaviour and bring on changes to the current characteristics of the industry, other things being equal. For example, if the costs of agency workers do rise, then hirers would be expected to reduce their usage of agency workers. These potential dynamic effects are discussed later in this section.

Eligibility

The qualifying period for equal treatment applies to basic working and employment conditions as defined in the Directive – pay, working time, overtime, breaks, rest periods, night work and holidays. Other aspects of the Directive are not subject to the qualifying period but give equal treatment from Day-1 – e.g. access to amenities or collective facilities such as canteens – unless different treatment can be objectively justified.

In addition, agency workers will also be informed of any vacant posts with the hirer; EU Member States shall take action to ensure that clauses preventing the movement from temporary worker to permanent employee are null and void; employment businesses shall not charge workers any fees; and EU Member States shall take suitable measures to improve an agency worker's access to training. Table 1 summarises those areas affected by the 12-week qualifying period and those not.

Table 1. Summary of areas affected by qualifying period and those not

From Day-1	12-week qualifying period
Access to amenities	Pay ¹
Temp-to-perm fees	Holidays
Improved access to training	Working time
Informing temporary workers about vacancies	Overtime
	Breaks
	Rest periods
	Night work

Note: 1 Pay excludes notice pay, redundancy pay, benefits in kind (e.g. company car allowance, life insurance, discount for purchase of company products), financial participation schemes (e.g. profit sharing, subsidised share ownership) and occupational social security schemes, including occupational sick pay as well as occupational pensions.

The discussion of the costs and benefits is presented in 5 broad sub-sections below:

- Part 1 deals with the evidence base and assumptions used in the analysis
- Part 2 presents analysis of the principal costs and benefits arising from the regulations, namely for pay and paid holiday
- Part 3 presents analysis for costs and benefits for other aspects of the regulations
- Part 4 addresses the issue of administrative burdens
- Part 5 discusses potential dynamic effects resulting from implementation of the regulations

Part 1: Evidence base and assumptions

In October 2008, this Department published “*Agency working in the UK: A review of the evidence*”⁷. This reviewed key data on the agency sector with the aim of providing an authoritative and up-to-date picture. The publication presented the nature of the industry in relation to agency workers, the employment businesses and the hirers that use them. This gave an account in terms of existing sources as well as reporting on the recent Survey of Recruitment Agencies (SORA) - a Department-funded survey on the sector. No one source gave the definitive word on agency working; instead a reasonable assessment was made on the best available evidence. During the initial consultation on policy a cost benefit analysis was presented on this evidence and views sought. From the consultation responses no further evidence emerged to radically change the key assumptions used within the cost-benefit analysis.

(i) The number of agency workers

The consultation sought views on a suitable legal definition of who should be covered by the Directive. It is difficult to estimate the number of workers covered by each proposed definition as the introduction of legislation relating to the working conditions of temporary agency workers is a new area and there have been no official statistics or studies that quantify in a robust and comprehensive way the degree of agency working in the UK. However, there are 3 estimates available on the number of agency workers. These are:

- **Office of National Statistics (ONS) Labour Force Survey (LFS)**, 2008 – gave estimates of around a quarter of a million;
- **Recruitment & Employment Confederation (REC) Census**, 2006 – gave an estimate of 1.1 million, and
- **BIS Survey of Recruitment Agencies (SORA)**, 2007 – which estimates around 1.5 million.

These estimates clearly differ significantly. As sources, it is recognised the REC and SORA business surveys have their limitations but they are preferable to the Labour Force Survey (LFS) because of strong evidence this latter source underestimates the number of agency workers. The differences in estimates may be explained as follows:

- SORA and REC were “snapshot” surveys of recruitment businesses. These businesses were asked how many agency workers were on temporary assignment in a given time period.
- LFS is a quarterly survey of households with a sample of 53,000 each quarter. Agency workers are harder to find in a national sample of households as they represent a small proportion of workers.
- Also, as the LFS is self-reported, respondents do not always perceive themselves to be “agency workers” as we define them. Some call themselves “casual workers”, others “seasonal workers”. Other people may not perceive themselves to even be temporary workers.

The mid-point between the REC and SORA of **1.3 million agency workers** is suggested as the best point or ‘mean’ estimate because of the high seasonality of agency work.

(ii) Length of time on assignment

If equal treatment were a Day-1 right then the entire estimated 1.3 million agency workers would be affected. Table 2 shows the distribution of agency workers by length of assignment. The Directive allows for a 12-week qualifying period after which there would be an entitlement to equal treatment. Data from SORA and the CBI indicate that between 40 and 45 per cent of agency assignments last more than 3 months, while the LFS indicates around 70 per cent. Possible explanations for why there is a difference between sources are the LFS data does not pick up on the shorter assignments and new assignments are more likely to be reported by the survey respondent as continuous employment when with the same agency.

It was proposed that the 12 week qualifying period should be 12 calendar weeks, regardless of working pattern (e.g. part time as opposed to full time). For the purpose of this Impact Assessment we use the SORA estimates that have been re-weighted on valid responses. As such we estimate that the proportion of agency workers affected by the 12-week qualifying period is approximately 45 per cent of the total, or around 590,000. While this does not equate exactly to the 12-week qualifying period, it is used as a working approximation. With a 6-week

⁷ See BIS website: www.BIS.gov.uk/files/file48720.pdf

qualifying period, this would affect some 819,000 agency workers, or 63 per cent of the total. The number of agency workers on assignments of longer duration clearly drops away from the higher percentage on short assignments, which is in line with the common conception that agency working is often characterised by short-term employment.

Table 2. Distribution of temporary agency workers by length of assignment

Duration of assignments	Source			
	CBI 2005	CBI 2007	SORA ¹	LFS ²
Less than 6 weeks	32%	33%	37%	-
Between 6 weeks and 3 months	28%	23%	18%	-
Between 3 months and 6 months	17%	25%	19%	23%
Between 6 months and 1 year	16%	13%	14%	19%
Greater than 1 year	7%	6%	11%	29%
Proportion greater than 3 months (12 weeks)	40%	44%	44%	71%

Sources: CBI Employment Trends Surveys, 2005 and 2007; BIS Survey of Recruitment Agencies (SORA), 2007; ONS LFS 2007

Note: Proportions may not add to 100 due to rounding. - means data is not available.

1 The SORA data is re-weighted on valid responses

2 LFS data is months in a job. Average of 4 quarters taken and uses 2007 weights

There is good reason to think the distribution of assignment lengths will change with the implementation of the Directive. One of the incentives to hirers will be to switch towards greater use of short-term agency working (i.e. assignments lasting less than 12 weeks) in an attempt to minimise costs. This will depend on the degree of extra cost, how sensitive hirers are to these cost changes, as well as the overall labour market situation and the feasibility of switching to shorter-term placements.

Around 20 per cent of assignments last between 3 and 6 months, this equates to around 260,000 agency workers. It is here that hirers may be induced to want to make greater use of short-time agency working of assignments lasting less than 12 weeks. Although the data does not allow a more precise estimate of duration of assignments within the 3-6 month range, it is likely that a certain proportion of these will, subject to practical considerations, become either one shorter-term assignment or two or more consecutive short-term assignments.

More work will need to be undertaken in the future to assess the potential extent of switching to shorter-term assignments, but the data above indicate that this may be a substantial group. We make an initial assumption that 25 per cent of assignments lasting between 3 and 6 months become assignments lasting less than 3 months; then the 12-week qualifying period would affect about **520,000 agency workers or 40 per cent** of the total. A greater number of shorter-term assignments will result in more administrative and process costs, offsetting some of the cost reductions.

It should be noted that the cost and benefit analysis is based on the average duration of agency assignments for all sectors taken together.

(iii) Additional comment on the data sources

Despite the Labour Force Survey's (LFS) underestimation of the number of agency workers and overestimation of the average length of assignment, no other data source gives as rich detail on the labour market to enable analysis of the current employment conditions of agency workers compared to a permanent employee, and so the Labour Force Survey is preferred for conducting more detailed analysis (i.e. by sector, occupation, workplace size etc.) in this Impact Assessment. Wherever possible the estimates produced in this Impact Assessment have been sourced for added precision from the Annual Population Survey (APS). This is an annual derivation of the LFS with a boost sample. In a typical quarter, the sampled LFS will pick up around 300-350 agency workers, equating to the estimated weighted count of around 250,000 agency workers. The APS picks up the number of agency workers sampled across all four quarters of the year and so around four times as many agency workers (1,200-1,400) are included in the sample. The estimated weighted count of the number of agency workers remains at around 250,000, but the increase to the number of agency workers in the sample means we have added confidence that the characteristics of the sampled agency workers is in line with the population of agency workers across the economy.

(iv) The characteristics of agency assignments

The cost-benefit analysis of the Directive is likely to be highly sensitive to the distribution and characteristics of agency workers, by industry sector in particular. Annual Population Survey proportions for the main industry

classes where agency workers are found were applied to the 1.3 million agency workers to arrive at the number in each sector.

SORA found over half (approximately 57 per cent) of temporary assignments were full-time compared to 43 per cent part-time. According to the APS/LFS sources, around 75 per cent of agency workers were full-time compared with 25 per cent part-time, the same proportion as all employees. We assume the latter.

As shown in Table 3, agency workers tend to work in *business services, manufacturing and transport, leisure and retail*. Education, health and the 'other public sector' presented in the table are a close but not a complete match with the public sector, as there are private sector jobs within this sector and public sector jobs in the other industry sectors. For simplicity we assume a complete match for the purposes of the costs and benefits presented in this Impact Assessment.

Table 3. Distribution of Temporary Agency Workers by industry sector

Industry sector ¹	Proportion	Number ²
Manufacturing	20%	260,000
Other production	7%	88,000
Business Services	22%	283,000
Transport, Leisure & Retail	18%	234,000
Other services	10%	130,000
Education	6%	79,000
Health	10%	132,000
Other public sector ³	7%	94,000
Total		1,300,000

Source: Annual Population Survey Apr 2007 - Mar 2008, SORA

Note: Figures have been rounded

1 'Education', 'health' and the 'other public sector' presented in the table are a close but not a complete match with the public sector, as there are private sector jobs within this sector and public sector jobs in the other industry sectors.

2 APS proportions are applied to the 1.3 million agency workers estimated by SORA. Rounded to nearest thousand.

3 Includes central & local government

As shown in Table 4, agency workers tend to have jobs as administrators and secretaries, process, plant and machinery operatives and other elementary occupations. Agency workers are unlikely to be managers or senior officials.

Table 4. Distribution of Temporary Agency Workers by standard occupation classification

Occupation	Proportion	Number ¹
Managers and senior officials	1%	19,000
Professional occupations	7%	96,000
Associate professional and technical	8%	102,000
Administrative and secretarial	25%	329,000
Skilled trades	4%	48,000
Personal service occupations	8%	99,000
Sales and customer service occupations	5%	58,000
Process, plant and machinery operatives	16%	214,000
Elementary occupations	26%	335,000
Total		1,300,000

Source: Annual Population Survey Apr 2007 - Mar 2008, SORA

1 APS proportions are applied to the 1.3 million agency workers estimated by SORA. Rounded to nearest thousand.

Part 2: Main costs & benefits

This section looks at the main effects of the Directive in terms of the costs and benefits related to basic working and employment conditions like duration of working time, overtime, breaks, rest periods, night work, holidays and pay by each of the affected groups. Unless stated otherwise the estimated costs and benefits are presented on the basis of Option 3 under a 12-week qualifying period.

(i) Pay

The Directive defines the principle of equal treatment as basic working and employment conditions shall be at least those that would apply if the agency worker had been recruited directly by the hirer to occupy the same job. Following the initial consultation, we propose that pay should be defined as basic pay plus other contractual entitlements that are directly linked to the work undertaken by the agency worker while on assignment. In terms of the Impact Assessment, pay is estimated on what the survey respondent said was their pay in a given reference period (this will include any overtime/night work premiums, bonuses and any other payments included in their salaries⁸). Again, it would be difficult to adjust the data to exclude specific benefits or to even know what some of these are.

The main benefit the Directive provides to agency workers is eliminating any basic pay differentials between them and an appropriate direct recruit. In terms of the data, it is impossible to find an exact match based on pay scales, collective agreements or custom and practice but instead a reasonable assumption is made that agency workers are likely to be either less experienced or that mismatches are more likely to occur among agency workers in terms of their skills and qualifications. On this basis, it is more appropriate to compare pay of permanent employees with relatively short job tenure. In this case permanent employees with less than 2 years' job tenure within the same or similar industry and occupation as the agency worker are chosen from the data as a suitable comparator.

Table 5 compares median hourly earnings⁹ for full-time, part-time and all agency workers by industry sector against an appropriate direct recruit as described above. This APS data compares well with other sources like the Annual Survey of Earnings and Hours (ASHE) which gives headline figures by full-time and part-time but no further breakdowns.¹⁰

As shown, overall agency workers earn about 90 per cent of the median hourly wage of the chosen comparator representing the direct recruit. There is a more significant gap in earnings among full-timers where agency workers earn only about 80 per cent of the chosen comparators' earnings, roughly equivalent to a pay gap of £1.75 an hour. Other notable results are in education where full-time agency workers earn more than their comparator, and health (96 per cent) and 'transport, leisure and retail' (91 per cent) where the pay gap is much smaller. This balances with business services (68 per cent) and 'other public sector' (66 per cent) where the pay gap is much larger.

In contrast, there is no real difference in earnings among part-timers. If anything in most industries sectors part-time agency workers earn more than their permanent counterparts, with manufacturing, 'other production' and 'other public sector' being the exceptions. The following formula is used to work out the additional wage benefits and costs:

Additional Wage Bill = Number of agency workers affected x Hours per week x Weeks per year (46.4) x Median hourly earnings gap.

Table 5. Median hourly earnings between agency workers and a permanent comparator

Industry sector ¹	Manufacturing	Other production	Business Services	Transport, Leisure & Retail	Other services	Education	Health	Other public sector ²	Total
Median hourly earnings									
(A) Agency workers									
Full time	£6.11	£7.25	£6.75	£6.00	£6.89	£11.43	£8.11	£6.76	£6.58
Part time	£5.97	£5.60	£7.41	£5.83	£6.50	£14.00	£9.58	£6.06	£7.25
All	£6.00	£7.22	£6.80	£6.00	£6.77	£13.39	£9.26	£6.58	£6.67

⁸ The regulations exclude bonuses that are not directly attributable to the quantity or quality of work done by the individual.

⁹ Median earnings are the point at which 50% of the selected population earn at or above this level. This measure is preferred to the mean as a more representative and stable measure, less affected by skew in the earnings distribution usually caused by a few high earners.

¹⁰ In ASHE all, full-time and part-time median hourly earnings of temporary agency workers are £7.09, £7.14 and £7.00 respectively compared with £6.67, £6.58 and £7.14 in the APS covering the same period.

(B) Comparator: All permanent employees who have been with their company for less than 2 years³

Full time	£8.02	£8.65	£9.88	£6.58	£9.23	£10.87	£8.46	£10.27	£8.33
Part time	£6.50	£7.21	£6.27	£5.47	£6.00	£6.40	£6.80	£7.81	£5.83
All	£7.89	£8.61	£9.11	£5.89	£8.11	£8.57	£7.70	£9.77	£7.40

(A/B) Hourly pay gap

Full time	76%	84%	68%	91%	75%	105%	96%	66%	79%
Part time	92%	78%	118%	107%	108%	219%	141%	78%	124%
All	76%	84%	75%	102%	83%	156%	120%	67%	90%

Source: Annual Population Survey Apr 2007 - Mar 2008

Note: 1 'Education', 'health' and the 'other public sector' presented in the table are a close but not a complete match with the public sector, as there are private sector jobs within this sector and public sector jobs in the other industry sectors.

2 Includes Central & local Govt.

3 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

From the APS, hours worked per week were between 37 and 40 for full-time agency workers and between 18 and 20 for part-time workers. This is very close to the hours worked by the comparator group, but the distribution of hours is different between the two groups; therefore the hourly wage is used in the calculation. The number of weeks per year is calculated as a whole 52 week year, minus the 5.6 weeks for the entitlement to statutory paid holiday.

1. Agency workers

Using the formula together with the data we construct estimates of annual wage benefits to agency workers. The overall gross wage benefit to agency workers under the 12-week qualifying period is therefore estimated to be between £1,196 and 1,327 million per year. The benefit range is based on the wage bill calculation over a 9 month period using the 3 month rolling APS data. The largest and smallest costs are then taken as the range. Any earnings are subject to tax and national insurance contributions (NICs) and we assume a 25 per cent deduction for this. This means *net* direct wage benefits to agency workers are estimated to be between **£897 and 995 million per year**.

2. Employment businesses

As represented in the triangular model, the wage benefits to agency workers create a wage cost to employment businesses. Employment businesses will aim to pass these increased costs on in the form of higher fees charged to the hirer. It may be the case that employment businesses are not able to recover all of their increased costs from hirers and the extent to which they can is likely to be affected by a number of factors, not least the prevailing economic conditions.

For the cost estimates produced in this document, we present an upper and lower bound based upon the level of pass through of increased costs from the employment business to the hirer. We assume here that employment businesses will pass on between 85 – 100 per cent of their increased costs as fees onto hirers. Any additional wage cost will incur non-wage labour costs, which are broadly defined by the International Labour Organisation as social insurance expenditure and other labour costs¹¹. Past analysis of published data suggests that the level of non-wage labour costs is an addition of 21 per cent to the wage bill. Therefore employment businesses under the 12-week qualifying period will incur costs of between **£0 and 241 million** if either a 100 (entire) or 85 per cent of the wage costs are passed to the hirer.

3. Hirers in the private sector

The private sector is defined as those hirers operating in the following sectors; manufacturing, any other production industry, business services, transport, leisure & retail and any other service industry. Total costs in Table 5 are calculated and aggregated from sector data. For more detailed costs by sector see Table A1 in the Annex. As described, we assume employment businesses are able to pass on between 85 and 100 per cent of the increased wage costs onto hirers in the private sector. Costs to hirers in the private sector will comprise of extra wage costs including non-wage labour costs (at 21 per cent). On this basis we estimate that the total cost to hirers of increased wages under the 12-week qualifying period will be between **£1,073 and £1,347 million**.

4. HM Exchequer & hirers in the public sector

The public sector is defined as those hirers operating in the following sectors; education, health and other public sector (including local and central Government). Total costs in Table 5 are calculated and aggregated from sector data. For more detailed costs by sector see Table A1 in the Annex. Increased pay for agency workers would also result in higher tax income and NICs. Assuming around 25 per cent of the increase in wages would be paid in taxes and NICs, the estimated annual benefits to the Exchequer would be between **£299 and 332 million per year**.

Further, the public sector as users of agency workers will incur extra wage costs including non-wage costs (at 21 per cent). On this basis we estimate that the total cost to public sector hirers of increased wages under the 12-week qualifying period will be between **£157 and 259 million** per year.

¹¹ See OECD Glossary of statistical terms stats.oecd.org/glossary/detail.asp?ID=4837.

Summary

Table 6 below sets out the additional wage costs and benefits for each affected group for the Government's preferred option. Where cost ranges were given in the text above, the maximum value to the hirer rather than the employment business is presented here.

Table 6. Wage costs & benefits			
	Derivation	Option 3	
Additional wage bill (£ Millions)	(A)	£1,327	
of which: in private sector (£ Millions)	(B)	£1,113	
Marginal tax rate (per cent)	(C)	25%	
Non-wage labour cost (per cent)	(D)	21%	
Additional wage & non-wage bill (£ Millions)	(E = A * (1 + D))	£1,606	
of which: in private sector (£ Millions)	(F = B * (1 + D))	£1,347	
Cost pass through from Employment business to Hirer (per cent)	(G)	100%	

(£ Millions)	Derivation	Option 3	
		Benefits	Costs
HM Exchequer (25% rate)	(H = A * C)	£332	£0
Agency worker (net earnings)	(I = A - H)	£995	£0
Employment business	(J = E * (1 - G))	£0	£0
Hirer (private sector)	(K = F * G)	£0	£1,347
Hirer (public sector)	(L = E - (J + K))	£0	£259
Total	(M = SUM(H - L))	£1,327	£1,606

Source: BIS estimates. Figures have been rounded

(ii) Holiday pay

The Directive also covers equal treatment on paid annual and public holidays. These will apply to all those agency workers who fall within the 12-week qualifying period. Although recent REC research (2008) indicates 79 per cent of agency workers benefit from holiday pay through the employment business, the purpose of the Directive is not to ensure an agency worker has the statutory minimum (already legislated for) but for the agency worker to have equal paid holiday as though they had been recruited directly by the hirer to occupy the same job.

The information on holiday entitlement is weak with the quarterly LFS as the only source available on paid holiday and bank holiday entitlement. The most recent information covers October – December 2007 when the statutory leave entitlement was changing from 20 to 24 days. To reflect the change from April 2009 onwards when statutory leave entitlement becomes 28 days including bank holidays, from 24 days previously, the latest LFS data is 'uprated' as described below.

Table 7 shows the mean paid holiday entitlement for full-time, part-time and all agency workers by industry sector against an appropriate direct recruit as described in the pay section above. This table is split between the data before 'uprating' and after 'uprating', where the former is the data as observed and unadjusted while the latter is adjusted for the change to 28 days by altering individual holiday entitlement for those currently falling below this level¹².

Agency workers are one of the groups most likely to benefit from the recent increase, and this is validated in the 'uprating' where the leave entitlements of agency workers rise faster than those of the direct recruit comparator. Also as one might expect the largest differential appears in the public sector where entitlements are higher, followed by the service then production sector. From the pay section above, the same assumptions and similar formula is used to calculate the additional holiday benefits and costs.

Table 7. Mean paid holiday entitlement between agency workers and a permanent comparator

Industry sector ¹	Industry Sector					Industry Sector				
	Production sectors	Business services	Other services	Public sector ²	Total	Production sectors	Business services	Other services	Public sector ²	Total
	Not Uprated to 28 days ³					Uprated to 28 days ³				
(A) Agency workers										
Full time	23	17	23	26	22	29	29	29	32	29
Part time	16	11	15	13	13	22	21	21	22	22
All	23	16	21	19	20	29	27	28	26	27
(B) Comparator: All permanent employees who have been with their company for less than 2 years⁴										
Full time	29	30	29	37	31	30	31	30	38	32
Part time	22	24	20	26	22	25	26	24	29	25
All	29	29	26	34	29	30	30	28	35	30
(A/B) Holiday entitlement gap										
Full time	80%	58%	79%	72%	72%	96%	93%	97%	84%	92%
Part time	71%	48%	75%	51%	61%	88%	83%	89%	75%	85%
All	79%	54%	82%	58%	70%	96%	89%	99%	75%	90%

Source: Labour Force Survey, Oct - Dec 2007

Note: 1 'Education', 'health' and the 'other public sector' presented in the table are a close but not a complete match with the public sector, as there are private sector jobs within this sector and public sector jobs in the other industry sectors.

2 Includes Central & local Govt.

3 Annual leave entitlement includes bank holidays. This changes to 28 days including bank holidays in April 2009

4 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

1. Agency workers

In terms of gross holiday pay this would mean agency workers are likely to benefit under the 12-week qualifying period by around £82 million per year. After tax and NICs, this is equivalent to **around £62 million** per year. The benefit range is based on a wage calculation over a 9 month period using the 3 month rolling APS data.

¹² For part-time workers they were observed to work around 3.5 days on average, so their new entitlement after April 2009 will be about 20 days (i.e. 3.5 x 5.6 weeks, see www.direct.gov.uk/en/Employment/Employees/Timeoffandholidays/DG_10029788).

2. Employment businesses

Increased paid holiday may result in costs to employment businesses under the 12-week qualifying period of between **£0 and 15 million** if either a 100 (entire) or 85 per cent of the costs are passed to the hirer.

3. Hirers in the private sector

Increased paid holiday may result in costs to hirer under the 12-week qualifying period in the private sector of between **£39 and 46 million**, including non-wage labour costs at 21 per cent, if either a 100 per cent (entire) or 85 per cent of the costs are passed to the hirer. Total costs in Table 7 are aggregated from sector data. For more detailed costs by these sectors see Table A2 in the Annex.

4. HM Exchequer & hirers in the public sector

In addition to this increased paid holiday entitlement would yield tax and NICs estimated at about **£ 21 million** per year. Increased paid holiday will also result in costs to hirer in the public sector under the 12-week qualifying period of between **£45 and 53 million**, including non-wage labour costs at 21 per cent, if either a 100 per cent (entire) or 85 per cent of the costs are passed to the hirer. Total costs in Table 7 are aggregated from sector data. For more detailed costs by these sectors see Table A2 in the Annex.

Summary

Table 8 below sets out the additional paid holiday costs and benefits mentioned for each affected group and compares against the different policy options. Where cost ranges were given in the text above, the maximum value to the hirer rather than the employment business is presented here.

Table 8. Paid holiday costs & benefits			
	Derivation	Option 3	
Additional wage bill (£ Millions)	(A)	£82	
of which: in private sector (£ Millions)	(B)	£38	
Marginal tax rate (per cent)	(C)	25%	
Non-wage labour cost (per cent)	(D)	21%	
Additional wage & non-wage bill (£ Millions)	(E = A * (1 + D))	£99	
of which: in private sector (£ Millions)	(F = B * (1 + D))	£46	
Cost pass through from Employment business to hirer (per cent)	(G)	100%	
(£ Millions)	Derivation	Option 3	
		Benefits	Costs
HM Exchequer (25% rate)	(H = A * C)	£21	£0
Agency worker (net earnings)	(I = A - H)	£62	£0
Employment business	(J = E * (1 - G))	£0	£0
Hirer (private sector)	(K = F * G)	£0	£46
Hirer (public sector)	(L = E - (J + K))	£0	£53
Total	(M = SUM(H - L))	£82	£99

Source: BIS estimates. Figures have been rounded

(iii) Duration of working time, breaks and rest periods

Other benefits provided to agency workers by the Directive under the right to equal treatment after 12-weeks in a given job derogation are working time provisions such as breaks and rest periods. The impact of these is difficult to quantify due to the limitation of data available; however it is thought that the benefits to the agency worker and the corresponding cost to the employment business/hirer would be small due to the likelihood that these benefits already exist. Further the public consultation did not raise any serious cost constraints to complying with this part of the Directive and stated this was common practice in most instances.

Part 3: Other costs & benefits

This section on other costs and benefits covers other aspects of the Directive mainly those where no qualifying period is applicable. This includes:

- Fees (i.e. Temporary to permanent status)
- Pregnant women and new mothers
- Pay between assignments
- Informing temporary agency workers of vacant permanent posts
- Access to amenities
- Access to training
- Information of workers' representatives
- Liability and dispute resolution

The estimated costs and benefits of these areas are smaller and sometimes more difficult to quantify than those presented in previous sections.

(i) Fees (i.e. Temporary to permanent status)

The Directive deals with the prohibition of contractual barriers and the levy of 'reasonable' fees by the employment business where the hirer wishes to directly employ the worker or the hirer introduces an agency worker to a third party who employs them directly. To comply with this part of the Directive, it was proposed in the consultation that the Conduct of Employment Businesses and Employment Agencies regulations should be amended to introduce the concept of "reasonableness" in relation to the "transfer fee" an employment business can charge and in relation to the extended period of hire as an alternative to paying the transfer fee. The restriction on such fees would effectively be a straightforward transfer from the employment business in terms of a reduction in revenue, to the hirer in terms of lower costs. There is question as to what extent this may be clawed back by the employment business through other means such as higher search and selection fees.

Following the consultation the Government we have considered the arguments put to us by the agency sector carefully and we are satisfied that there is no absolute need to amend the Regulations in order to implement the Directive. Furthermore, we also accept that there is not sufficient evidence to justify introducing a specific reasonableness test at this time. We have therefore concluded that we should change our approach and will drop the proposed amendment of the Conduct Regulations. Existing common law principles already provide for reasonableness i.e. individual parties will have to take a private law action against any penal charges under the restraint of trade common law principles.

1. Employment businesses

The consultation impact assessments attempted to quantify the effects of introducing reasonable fees. It was assumed that around a quarter of a million temporary agency jobs might be 'permed' each year at an estimated cost to employment businesses of between £45 and £90 million in terms of lost fee income¹³. This change has been reflected in the overall costs calculations in tables 9, 12 and 13 below

Hirers

Whereas hirers would have benefited by between £45 and £90 million per year from the introduction of reasonable fees, this now will not be the case and this change has been reflected in the overall benefits calculations in tables 9, 12 and 13 below.

(ii) Pregnant women and new mothers

Article 5.1 of the Directive requires "... the rules in force in the user undertaking on protection of pregnant women and nursing mothers.... must be complied with".

¹³ This is dependent on the size of the excessive part of the fee, previously estimated at between £250 and £500.

Hirers

Only about one per cent of the UK workforce are pregnant or expectant mothers at any one time. We initially assume businesses are able to accommodate this small group and this poses **negligible** cost under the extension of additional health and safety provisions. These include the right to be offered alternative work or hours if there is a health and safety risk; the right to be suspended on full pay if alternative arrangements cannot be put in place; and paid time off for ante-natal appointments.

(iii) Pay between assignments

Article 5.2 of the Directive provides an “exemption” from equal pay where the agency workers has a permanent contract of employment with the employment business and continues to be paid between assignments. The issue is whether a ‘fair’ level of pay needs to be set in these instances to tackle any anti-avoidance abuse.

We assume the practice of pay between assignments involves a small number of agency workers in larger employment businesses who are generally well paid. Many of the examples given were among those working in managed services and therefore excluded from the scope of the Directive.

(iv) Informing temporary agency workers of vacant permanent posts

Article 6.1 of the Directive states that “agency workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers in that undertaking to find permanent employment. Such information may be provided by a general announcement in a suitable place in the undertaking for which and under whose supervision temporary agency workers are engaged.”

Hirers

Each year around 7 million¹⁴ people move into a new job. Given that around 16 per cent of organisations use temporary workers¹⁵, an initial approximation would suggest that around 1.12 million vacancies should be advertised to agency workers per year. In terms of unit costs, a direct comparator is available from the 2005 PwC Administrative Burdens exercise under the 2002 Fixed-term contract workers regulations. Here the unit cost associated with *informing fixed-term employees of available vacancies in the establishment* through a public notice board/email was estimated at £2.22¹⁶. As such the total additional costs to employers of advertising vacancies to the temporary agency workers they use would amount to around **£2.5m** a year.

(v) Access to amenities

Article 6.4 of the Directive states that “agency workers shall be given access to the amenities or collective facilities in the user undertaking especially canteen, childcare facilities and transport services under the same conditions as workers employed directly by the undertaking, unless the difference in treatment is justified by objective reasons.”

Hirers

We assume access such amenities or services within the hirer imposes little or no extra cost. Most social facilities are likely to involve a certain amount of fixed set-up costs, therefore the marginal costs of making these facilities available to temporary agency workers will tend to be **negligible**.

(vi) Access to training

Article 6.5 of the Directive states EU “Member States take suitable measure or shall promote dialogue between the social partners in accordance with their national traditions and practices in order to improve agency workers access to training...” in the employment business and in the hirer. This is **not** necessarily to give equal treatment with regards to the training an agency worker receives in comparison to a permanent employee.

1. Agency workers

Improved access to training will potentially provide agency workers with enhanced skills, which may increase their productivity in the workplace. Initial estimates of the impact of improved access to training were presented in the consultation stage impact assessment. Below we set out revised estimates which may greater allowance for the degree of non-response from the Labour Force Survey.

2. Employment businesses

¹⁴ See for instance ERRS No. 56, How have employees fared?, see www.BIS.gov.uk/files/file27472.pdf.

¹⁵ Inside the Workplace: First findings from the 2004 Workplace Employment Relations Survey www.BIS.gov.uk/files/file11423.pdf

¹⁶ We believe that generally the marginal costs are probably lower still and so this should be seen as an upper bound estimate.

The cost estimates set out below are given for illustration. LFS data for 2007 suggest that 41 per cent of permanent employees had received job training in the 3 months prior to the survey being carried out. In comparison 23 per cent of agency workers had done so, a differential of 18 percentage points. As such, 18 per cent of the 1.3 million agency workers would be affected or around 234 thousand.

We assume the affected agency workers would *on average* receive an additional 2½ days' training per year. Furthermore we assume an average cost of training of £200 per day. If the gap in access to training was closed by employment businesses this would amount to a total cost of **£117 million per year**. However as indicated above the regulations do not necessarily give equal treatment with regards to the training an agency worker receives.

Although the provision is directed at training provided by both the hirer and the employment business, most (78 per cent) is carried out by the hirer, 14 per cent by employment businesses and the remaining 8 per cent of training is carried out by both parties¹⁷. We therefore assume that the final split between hirers and employment businesses is 82:18.

Although employment businesses would also need to provide about 18 per cent of the additional training to agency workers, as assumed previously between 85 per cent and 100 per cent of the costs could be passed on to a hirer through increased fees. Therefore, the actual cost liability from additional training for employment businesses would amount to an estimated between **£0 and £3.2 million** per year.

3. Hirers

Taken from assumptions and costs presented in employment business section, 82 per cent of training is provided directly by hirers so we estimate the cost of providing this is £96m, plus between £18m and £21m in indirect training costs passed on by employment businesses in increased fees. Overall therefore costs of additional training to hirer would range between **£114 and 117 million** per year.

It is acknowledged that in many hirers, training budgets are not an elastic resource and it is possible that there is a fixed amount that a company can spend on training each year. In this case, it is possible that any additional training for agency workers would be at the expense of training for permanent employees and therefore there would be no increase in the annual cost to the hirer. For now, we assume the costs as described above.

(vii) Information of workers' representatives

Article 8 of the Directive relates to the provision of information, whereby the "...*user undertaking must provide suitable information on the use of temporary agency workers when providing information on the employment situation in that undertaking to bodies representing the workers set up in accordance with national and Community legislation.*"

Hirers

This requirement may create a cost to the hirer in the collation and retention of such information, see also administrative burden costs.

Public sector as an employer

There will be costs to the public sector as a user of agency workers. The LFS suggest that just under a quarter (23 per cent) of agency workers are on assignments in the public sector. Sector analysis for the items in this section will be difficult to quantify in the same way as the wage and holiday costs and benefits, instead a 77:23 split is applied to all costs to hirers to work out the public/private sector share. This split is presented in the Table 9.

(viii) Liability and dispute resolution

Enforcement Costs

The regulations implementing the Directive will enable an agency worker to bring a claim to an Employment Tribunal and the regulations will be added to the list of jurisdictions covered by the Employment Appeal Tribunal. In the interests of preventing cases coming to Tribunal unnecessarily, disputes relating to rights under these regulations will be eligible for Acas pre- and post-claim conciliation. Agencies will also be encouraged to set up or use internal dispute resolution procedures as a way of informally resolving problems related to equal treatment.

Where agency workers choose to pursue an ET claim and where this claim is upheld by the Tribunal, an approach to remedies similar in relation to the provisions in the legislation to those available under the Fixed-Term and Part-time regulations will be adopted.

¹⁷ REC report: "Temporary agency workers in the UK: Understanding their role and expectations."

At this stage it is very difficult to estimate the annual volume of claims under the agency worker jurisdiction. As a proxy we consider the volume of claims under both the Fixed-term and Part-time regulations. Since 2002-03 Tribunal Service statistics show that claims under these two jurisdictions have averaged 266 and 627 respectively per year. Weighted against the total number of fixed-term and part-time workers in the economy¹⁸, the risk of an ET claim would therefore be between 1 and 2½ claims per 10,000 workers. On this basis we estimate that there will be between 125 and 315 potential ET claims annually under the agency worker jurisdiction. Following the introduction of changes to the dispute resolution system in April 2009 we estimate that with the enhanced Acas helpline and with pre-claim conciliation the number of actual ET claims lodged will range between 92 and 229 each year.

Claims made to a tribunal will result in costs for Government, employment businesses and the workers involved. Claims brought under the fixed-term jurisdiction are considered as *standard track* cases for the ET¹⁹. Using unit costs of £400 for the Exchequer, £3,572 for employers and £2,387 for workers²⁰ we estimate that the total costs to the Exchequer will range between **£50,000 and £126,000**, costs to employment businesses will be between **£0.45 million and £1.12 million**. Costs for agency workers are estimated between **£0.3 million and £0.75 million**.

Furthermore the regulations introduce penalties to combat abuse and avoidance. As such it has been decided that remedies shall be determined as 2 weeks' pay minimum award plus up to £5,000 per agency worker of punitive additional award. The costs for agencies arising from this regulation are avoidable under full compliance with the legislation and therefore not quantified here as additional economic costs or benefits arising from the policy change itself.

¹⁸ There are around 1.1 million fixed-term contract workers and around 6.5 million part-time workers

¹⁹ ET cases are broadly categorised into short, standard and open period cases reflecting the time requirements associated with each.

²⁰ Using the model from the Dispute Resolution Review final impact assessment these are estimated average unit costs across the whole process for standard track claims. The dispute resolution system is complex and only a relatively small proportion of potential claims reach a tribunal hearing, the rest mostly being settled or withdrawn beforehand often as a result of Acas pre-claim and ET1 conciliation. For more detail see www.berr.gov.uk/files/file54183.pdf

Summary

Table 9 below sets out the costs and benefits mentioned for each affected group and compares against the different policy options. Where cost ranges were given in the text above, the maximum value to the hirer rather than the employment business is presented here.

Table 9. Other costs & benefits			
(£ Millions)	Derivation	Option 3	
		Benefits	Costs
<u>Enforcement</u>			
Employment agency	(A)	£0	£1
Hirer (private sector)	(B = A * 0.77)	£0	£0
Hirer (public sector)	(C = A - B)	£0	£0
Agency worker		£0	£1
<u>Access to amenities</u>			
Hirer (private sector)	(D)	£0	£0
Hirer (public sector)	(E)	£0	£0
<u>Informing about internal vacancies</u>			
Hirer (private sector)	(F)	£0	£2
Hirer (public sector)	(G)	£0	£1
<u>Access to training</u>			
Employment agency	(H)	£0	£0
Hirer (private sector)	(I)	£0	£90
Hirer (public sector)	(J)	£0	£27
<u>Total</u>			
Agency worker		£0	£1
Employment agency	SUM(A,H)	£0	£1
Hirer (private sector)	SUM(B,D,F,I)	£0	£92
Hirer (public sector)	SUM(C,E,G,J)	£0	£27
Total	SUM(A-J)	£0	£121

Source: BIS estimates. Figures have been rounded

Part 4: Administrative burdens

The introduction of the Directive will inevitably have cost implications in terms of increased information obligations within the administrative burdens framework. This is particularly the case in relation to the information on the basis for establishing equal treatment (pay, holiday etc), as this will need to be calculated, communicated between the parties and recorded by the employment business. It is likely that employment businesses will bear most of this cost, with some falling on to hirers.

In light of this, it is difficult to accurately quantify the financial effects, but we assume here a relatively light touch approach. Our underlying assumptions are that:

- Hirers will need to calculate and/or communicate to the employment business the necessary information. For this we assume on average 1.5 hours' of a personnel manager's time²¹.
- Employment businesses will have communication (with both hirer and agency workers) and record-keeping obligations. For this we assume a total of 3 hours' of agency staff time²².

²¹ This is based on the median hourly wage (£20.93) in 2009 for personnel managers (code 1135), uprated for non-wage labour costs. Source: ASHE 2009, table 14-6a

This results in an average unit cost per assignment of £29.90 for employment businesses and £38 for hirers²³. Official data does not exist of the total number of agency assignments. The recent Survey of Recruitment Agencies, 2007, suggests there are around 2.5 million temporary agency assignments per year. We therefore assume for now that the number of affected assignments will range from around 1 million under a 12-week qualifying period. Multiplied by the total number of assignments affected each year this results in an increase in admin burdens for hirers of around **£40m** and **£31m** for employment businesses under a 12-week qualifying period.

Sector analysis for the item in this section will be difficult to quantify in the same way as the wage and holiday costs and benefits, instead a 77:23 split reflecting how agency workers are apportioned between the two sectors is applied to all costs to hirers to work out the public/private sector share. This split is presented in Table 10 below.

Table 10. Administrative burden

(£ Millions, 2009 prices)	Option 3	
	Benefits	Costs
Employment business	£0	£31
Hirer (private sector)	£0	£31
Hirer (public sector)	£0	£9
Total	£0	£71

Source: BIS estimates. Figures are in 2009 prices. The total administrative burden is equivalent to £65 million in 2005 prices

Transitional costs

Employment businesses are likely to incur one-off transitional costs following the implementation of the Directive. Beyond the administrative burden information obligations outlined above employment businesses will incur costs associated with changes to IT systems, staff training and in some cases recourse to expert legal advice.

As an illustration, across the 16,000 employment businesses in the UK, even relatively minor average unit costs for implementation of £2,500 would amount to **£40 million in transitional costs**. Further research will be required to more accurately measure these costs in due course, but it is likely that these costs will be significant. Greater understanding of the nature and scale of transitional costs will also inform work by the Department to minimise those costs, e.g. through providing clear guidance and developing simple procedures for implementation.

²² This is the median hourly wage (£8.23) for staff in the *Temporary employment agency activities*, uprated for non-wage labour costs (21%). Source: ASHE 2009, table 16-6a

²³ Clearly in those enterprises employing a number of agency workers for a given assignment there will be economies of scale and average unit cost should be lower.

Part 5: Potential dynamic effects

Higher costs associated with hiring temporary agency workers are likely to have important dynamic effects. These effects may manifest themselves in terms of price (wages) and/or quantity (number of agency workers hired) adjustments. Furthermore the nature of the effect is likely to vary by sector or occupation. Such dynamic effects should therefore also be considered as part of the overall cost-benefit analysis.

The 2002 Impact Assessment suggests that employers may benefit from such things as higher productivity from the increased training received by agency workers as well as greater ease in filling vacancies²⁴.

Estimating the dynamic effects has a number of problems, not least predicting what the actual response of hirers might be. In addition to this the nature and degree of their response may well be determined by the prevailing economic climate. One aim of the consultation stage impact assessment had been to attempt to quantify these possible dynamic effects. This would have been based largely on feedback to the consultation suggesting possible legitimate actions by hirers. In fact there were few detailed responses of this nature (a summary is provided below) and, given the uncertainty of the possible response in the current economic climate, it is very difficult to try and quantify with any reliability what the various responses may add up to.

For this reason we present again the analysis from the consultation stage impact assessment and summarise those responses received.

Beyond this, it was recognised above that with a 12-week qualifying period there is likely to be a knock-on impact in particular on assignments of between 3 and 6 months. We assumed this dynamic effect to affect a quarter of those assignments.

(i) Reasons for using agency workers

Data from WERS 2004 shows that among workplaces with 10 or more employees, the main reason²⁵ for hiring temporary agency workers was to *provide short-term cover for absences/vacancies* (58 per cent of workplaces), followed by *to match staffing levels to peaks in demand* (37 per cent), *because it was not possible to fill staff vacancies* (24 per cent) and *to cover maternity or annual leave* (17 per cent); other, less common, reasons included *to obtain specialist skills* (9 per cent) and *because of a freeze on permanent recruitment* (4 per cent).

The CBI Employment Trends Survey 2004 listed the following reasons: *short-term cover for vacant position* (31 per cent), *to meet an upturn in demand* (29 per cent), *cover for staff absence* (21 per cent), *cover for maternity/paternity leave* (6 per cent), *cover for skill shortages* (6 per cent) and *changes in work organisation* (3 per cent).

What these results highlight is the key role of temporary agency work in offering the necessary labour market flexibility for employers in order to respond quickly and effectively to both shortfalls in labour supply and/or surges in product/service demand.

²⁴ This assumes the Directive's provisions serve to increase the attractiveness of agency working and hence the supply of agency workers, thereby resulting in a larger pool of labour for employers to draw on.

²⁵ More than one response was allowed and 32% of workplaces offered more than one response.

(ii) *The effect of higher cost of hiring agency workers*

The 2007 CBI Employment Trends Survey asked what effect the proposed EU Directive on agency work would have on firms. The results are given in table 11 below.

Table 11. Perceived effects of the proposed EU directive on agency work on firms

% Response	Significant	Little	No effect
Additional bureaucracy	58	32	10
Extra costs	65	26	9
Reduction in flexibility	62	28	10
Reduction in use of temporary workers	58	30	12
Increase in workload for permanent staff	37	46	18
Reduction in benefits for permanent staff	10	30	60
Positive consequences	9	43	48

Source: CBI Employment Trends Survey 2007

REC (2008)²⁶ conducted research asking employers how their current use of agency workers would be affected if costs increased by 25 per cent. Some 37 per cent of employers stated they would stop using agency workers altogether, while a further 36 per cent said they would reduce their use. The remainder stated their use of agency workers would not be affected.

These results indicate that there may be a substantial impact on the use of agency workers, though clearly account must also be taken of differences in perceived and actual outcomes (i.e. employers may not have such an extreme reaction), plus the cost increase associated with employing temporary agency workers is estimated in this Impact Assessment to rather be in the region of 10 per cent.

A follow-up question in the REC survey asked those employers who stated they would stop using agency workers altogether, how they would replace them. 43 per cent of employers stated they would employ more permanent staff, while a further 27 per cent would ask existing staff to work longer hours, i.e. they would deal with the situation by internal re-organisation. Beyond this, 13 per cent reported they would use casual staff and 9 per cent would use fixed-term contract workers. Finally, 5 per cent reported that they would turn down contracts/work to manage work flows.

The results above point towards behavioural outcomes that are arguably more complex than first envisaged – for instance, a significant share of employers who would stop using the more flexible option of agency workers are likely to replace them with a more inflexible, permanent alternative. Some of these results may be explained by a lack of awareness and understanding of the Directive. The follow-up analysis will therefore attempt to account for these anomalies.

The responses of hirers and any impact on their behaviour of usage of agency workers could conceivably have either a positive or negative effect on the underlying cost estimates. For instance, a switch towards more permanent workers may actually increase costs to business, whereas a reduction in the number of temporary workers hired and consequent effects on output, if work is turned down.

²⁶ Temporary agency workers in the UK: Understanding their role and expectations. REC/BIS, www.rec.uk.com/about-recruitment/research/bookshop/Tempagencyworkintheuk

(iii) The effect on permanent staff

Estimating the effect the Directive will have on agency workers is complex but sufficient data exists on pay and holidays and the like to enable reasonable cost estimates and associated assumptions to be made. However, we are unable to ascertain the effect, to permanent staff as a result of the Directive. Table 11 shows that an increase to the workload for permanent staff was marked as 'significant' by 37 per cent of respondents, and a reduction in benefits to permanent staff was marked as either 'significant' or 'little' by 40 per cent of respondents.

Beyond the CBI's survey, information of the effect to permanent staff is limited. It may reasonably be assumed that with the increased cost of hiring agency staff that companies could cut back on permanent recruitment, but that would only affect potential staff, not staff already employed. As discussed on above, increased access to training for agency workers could result in training opportunities being transferred away from permanent employees if training budgets could not be increased.

(iii) The effect on employment businesses

To a large extent the effect of this Directive on employment businesses will be based on the hirers demand for their services due a rise in the cost of agency workers as discussed above. Also the effect of additional administrative burden on their costs will also have an effect in the flexibility to deal with current and new demand.

Feedback from consultation

During the course of both stages of the consultation some feedback has been received on the possible actions that hirers and agencies might take in response to the higher direct and administrative costs of employing agency workers. These responses were however qualitative rather than quantitative in nature and highlighted the following potential actions:

- A shift to more contracting out of services
- Some agency workers may be offered permanent employment contracts as the 12-week point approaches
- Some larger organisations may create more permanent positions and establish 'in-house staff banks' for deploying staff according to need.

While the possible actions mentioned above are all legitimate, there were at the same time concerns about safeguarding against potential abuse of the regulations. In particular there was concern around avoidance of the regulations where hirers might attempt to structure assignments to circumvent the regulations (regulations now contain an anti-avoidance provision to deal with this issue backed by the possibility of an award of up to £5,000).

F: Risks

The analysis so far is based on a number of assumptions about the detail of the provisions of the Directive, as well as the available underlying evidence base. As outlined in the previous section there are a number of legitimate ways hirers and employment businesses might respond in the face of these regulations. The evidence to date remains inconclusive about these dynamic effects, but depending on how they respond they may serve to either increase or decrease the overall costs and benefits presented in this impact assessment.

G: Enforcement

The Government is committed to consulting the social partners regarding the implementation of the Directive, in particular with regard to mechanisms for resolving disputes regarding the definition of equal treatment and compliance with the new rules that avoid undue delays for workers and unnecessary administrative burdens for business. Further work on the costs of enforcement will be undertaken as part of the public consultations.

H: Summary table of costs and benefits

The summary of total maximum costs to hirers rather than employment businesses and maximum benefits is given below by main group and is largely an aggregation of the estimates from tables 6, 7, 9 and 10 above. Where cost ranges were given above, the maximum value has been used here. These estimates should therefore be read as costs may be 'up to' the given figure.

Table 12. Total quantified costs and benefits by source and by group

(£ Millions)	Option 3	
	Benefits	Costs
<u>Agency worker</u>		
Wages	£995	£0
Holiday	£62	£0
Other (incl. enforcement)	£0	£1
Admin burdens	£0	£0
Total	£1,057	£1
<u>Employment business</u>		
Wages	£0	£0
Holiday	£0	£0
Other (incl. enforcement)	£0	£1
Admin burdens	£0	£31
Total	£0	£32
<u>Hirer (private sector)</u>		
Wages	£0	£1,347
Holiday	£0	£46
Other (incl. enforcement)	£0	£92
Admin burdens	£0	£31
Total	£0	£1,516
<u>Public sector (hirers & HM Treasury)</u>		
Wages	£332	£259
Holiday	£21	£53
Other (incl. enforcement)	£0	£27
Admin burdens	£0	£9
Total	£352	£349
<u>Grand Total</u>		
Wages	£1,327	£1,606
Holiday	£82	£99
Other (incl. enforcement)	£0	£121
Admin burdens	£0	£71
Total	£1,409	£1,897

Source: BIS estimates. Figures have been rounded. NB: As stated in the text this summary table provides total maximum costs to hirers rather than employment businesses to avoid double counting in cases where there is cost pass-through

It should be noted that costs are different in magnitude to the benefits because the latter are updated to include non-wage labour costs. Equally, the maximum total costs should be read as employer costs with 100 per cent pass-through, in which case employment business costs are zero. Hence employment business costs only arise with less than 100 per cent cost pass-through.

Table 13. Total quantified costs and benefits by option and by group

(£ Millions)	<i>Option 3</i>		
	Benefits	Costs	Net
Agency worker	£1,057	£1	£1,056
Employment business	£0	£32	-£32
Hirer (private sector)	£0	£1,516	-£1,516
Public sector (Hirers & HM Treasury)	£352	£349	£3
Total	£1,409	£1,898	-£489

Source: BIS estimates. Figures have been rounded

From the above table, under the 12-week qualifying period:

- Agency workers would benefit by around £1.1bn
- Private sector hirers would face net costs of around £1.5bn
- Employment businesses would face net costs of £32 million.
- The Exchequer would incur a marginal net benefit of £3 million. The Exchequer benefits through higher tax revenues and this slightly offsets the higher costs of employing agency workers in the public sector.

To put these figures into some context, £744 billion of wages and employer social contributions were paid across the UK economy in 2007²⁷. These costs represent approximately 0.3 of these total payments.

I: Implementation

Political agreement on the Directive was reached at the EU Employment Council on 9 June 2008 and published in the Official Journal on 5 December 2008. EU Member States have until 5 December 2011 to adopt and publish laws, regulations and administrative provisions. The Government proposes that the legislation will come into force on 1 October 2011.

J: Monitoring and evaluation

Article 12 of the Directive states that '*By 5 December 2013, the Commission shall, in consultation with the Member States and social partners at Community level, review the application of this Directive with a view to proposing, where appropriate, the necessary amendments*'.

This will mark the first major review of the implementation of the Directive in the UK. In addition to this we will be conducting ongoing monitoring and evaluation using existing information sources, such as the Labour Force Survey, specific industry research as well as data on enforcement from the Tribunals Service.

²⁷ ONS Blue Book 2008, http://www.statistics.gov.uk/downloads/theme_economy/BB08.pdf

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annex A: SPECIFIC IMPACT TESTS

1. Competition Assessment

Business sectors affected

Agency workers tend to be concentrated in business services (i.e. legal, accountancy, secretarial) (22 per cent), manufacturing (20 per cent) and 'transport, leisure and retail' (18 per cent), see Table A1. The 1.3 million agency workers in these sectors represents about 4.5 per cent of all UK workers, while the estimated costs from implementing the Directive represent somewhere between 0.3 (12-week qualifying period) and 0.6 per cent (Day-1) of the total UK pay bill in 2006.

Competition Assessment

In terms of the impact on the pay bill by industry sector, Table A1 presents some indicative estimates excluding non-wage costs for an 8 sector split while Table A2 shows both wage and paid holiday bill (excluding non-wage costs) in a collapsed set of 4 industries. Both tables show figures in terms of the burden across sector and the percentage change in each sector's total wage bill.

In terms of the cost burden, this is estimated to fall greatest on business services (35 per cent), manufacturing (24 per cent) and other public sector (includes local and central Govt.) (15 per cent). In terms of increase on baseline cost, this is estimated to fall greatest on other public sector (includes local and central Govt.) (20 per cent) followed by business services (15 per cent). Overall, the Directive may raise the cost of agency workers by almost 10 per cent.

Table A1. Wage bill impact by 8 sector split

Measure	Industry sector ¹ Manufacturing	Other production sectors	Business Services	Transport, Leisure & Retail	Other services sectors	Health	Education	Other public sector ²	Total
Proportion of agency workers	20%	7%	22%	18%	10%	6%	10%	7%	100%
(A) Total increase in wages from the Directive (£ Million)	£320	£90	£460	£80	£160	£20	-	£200	£1,330
% burden of total costs on sector	24%	7%	35%	6%	12%	2%	-	15%	100%
(B) Baseline costs: Total wage bill before the Directive (£ Million)	£2,770	£1,110	£3,000	£2,310	£1,380	£1,520	£1,180	£1,000	£14,280
(A/B) % change in total wage bill after the Directive	12%	8%	15%	3%	12%	1%	-	20%	9%

Source: BIS estimates. Figures have been rounded to the nearest £10 m.

Note: 1 'Education', 'health' and the 'other public sector' presented in the table are a close but not a complete match with the public sector, as there are private sector jobs within this sector and public sector jobs in the other industry sectors.

2 Includes Central & local Govt. "-" means negligible amount less than £ 5m

Table A2 (next page) tells a similar story on a reduced number of industry sectors, business services again stands out with the greatest burden of overall costs and increase in baseline costs.

Table A2. Wage & paid holiday bill impact by 4 sector split

Measure	Industry sector ¹ Production sector	Business services	Other services	Public sector	Total
Proportion of agency workers	27%	22%	28%	23%	100%
(A) Total increase in wages & holidays from the Directive	£420	£480	£250	£260	£1,410

(£ Million)

% burden of total costs on sector	30%	34%	18%	18%	100%
(B) Baseline costs: Total wage & holiday bill before the Directive (£ Million)	£4,370	£3,370	£4,170	£4,160	£16,070
(A/B) % change in total wage bill after the Directive	10%	14%	6%	6%	9%

Source: BIS estimates. Figures have been rounded to the nearest £10m

Note: 1 The 'Public sector' presented in the table is a close but not a complete match with the public sector, as there are private sector jobs within this sector and public sector jobs in the other industry sectors.

2. Small Firms Impact Test

Once again, the lack of robust data on agency working poses problems for more in-depth analysis and in particular to assess the true effect of the Directive on smaller firms. Data from both the LFS and the CBI are used below to provide some insight into the effects, though this should not be considered definitive.

Annual cost per organisation

The annual costs per organisation, presented on the summary cost sheets, are calculated by splitting the cost by the proportion of agency workers who reported they worked in that workplace size. This is divided by the number of organisations in each of these size categories. Not all these organisations will use agency workers, so these figures should be treated as indicative only.

(i) Distribution of agency workers by number of employees at workplace

Table A3 below demonstrates the distribution of agency workers by firm size and industry – denoted here by the number of employees at the workplace. It is clear that agency working is relatively more concentrated in larger organisations. For instance, over a third of agency workers are in workplaces with fewer than 50 employees compared with about half across all employees.

Table A3. Distribution of agency workers by number of employees at workplace

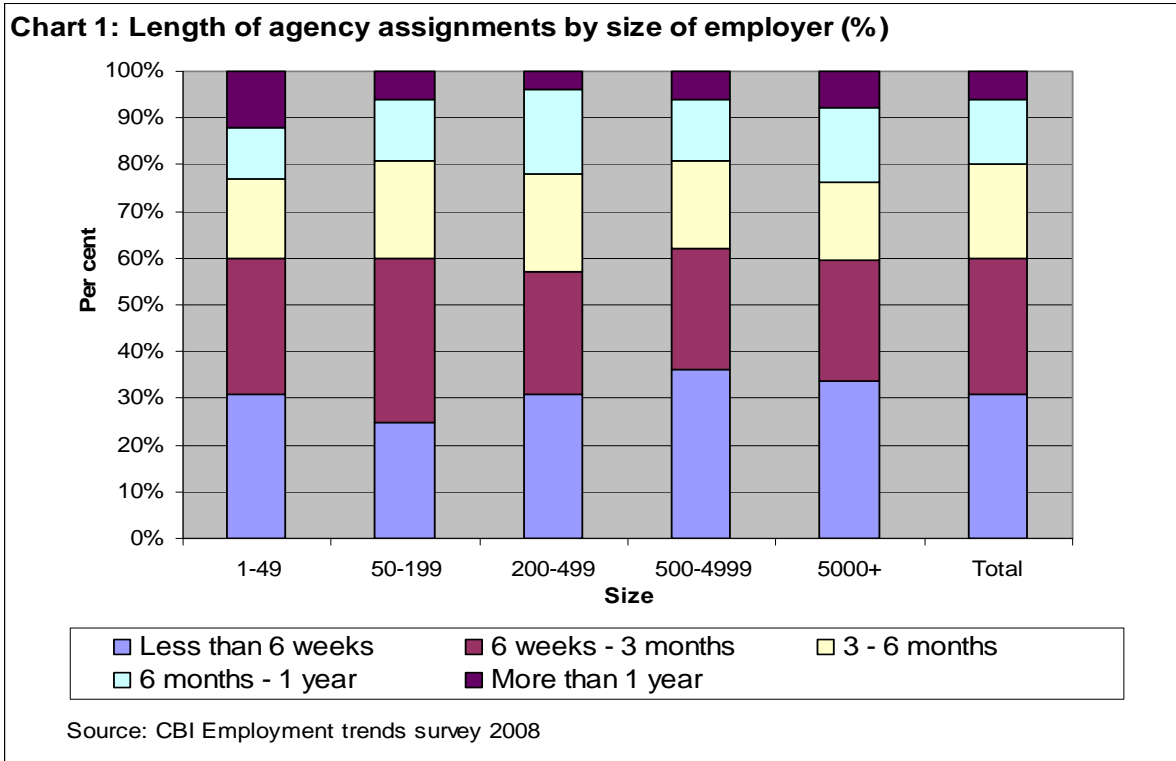
% response Industry sector	Workplace size ¹ (employees)				Total
	Micro	Small	Medium	Large	
Manufacture	6	15	34	44	100
Other production	24	22	38	17	100
Business Services	12	17	43	28	100
Transport, Leisure & Retail	22	32	24	22	100
Other services	14	25	24	38	100
Education	14	48	28	10	100
Health	19	27	19	35	100
Other public	10	19	25	46	100
Total	14	24	30	32	100

Source: Annual Population Survey April 2007 - March 2008. Proportions may not sum to 100 due to rounding.

Note: 1 Micro businesses are defined as having 1-10 employees, Small as 11-49, Medium as 50-250 and Large 250+

(ii) Length of agency assignments by size of employer

The latest data from the 2008 CBI Employment Trends Survey shows the distribution of agency worker assignment lengths by employer size. In general, there does not appear to be much difference in assignment lengths of 3 months or more between larger and smaller employers, see chart 1.



(iii) Distribution of agency workers pay by number of employees at workplace

In firms of all sizes, apart from micro businesses, agency workers earn less than their permanent comparators. In large workplaces (250+ employees), median hourly earnings of agency workers are only 70 per cent of the level of their permanent comparators, compared with 97 per cent among small workplaces (11 – 49 employees).

Table A4. Median hourly wage of agency workers and permanent employees by number of employees at workplace

	Workplace size ¹ (employees)			
	Micro	Small	Medium	Large
(A) Agency workers	£8.53	£8.12	£7.64	£8.49
(B) Comparator: All permanent employees who have been with their company for less than 2 years ²	£7.98	£8.35	£9.88	£12.08
(A/B) Hourly pay gap	107%	97%	77%	70%

Source: Annual Population Survey April 2007 - March 2008

Note: 1 Micro businesses are defined as having 1-10 employees, Small as 11-49, Medium as 50-250 and Large 250+

2 Certain occupation groups were excluded in this comparator where only a small percentage of agency workers are found (i.e. less than 0. per cent)

Overall, the LFS data suggests that agency working is less prevalent in smaller firms and the hourly pay gap is also smaller among smaller firms as such the introduction of the Directive is likely to have a greater impact on larger firms.

Annex B: Equality Impact Assessment

This section sets out the equality impact assessment (EQIA). This has been expanded since the version presented in the consultation stage IA, partly due to feedback from the consultation and partly based on further analysis carried out.

This EQIA includes sections on policy development and monitoring and evaluation. However, it mainly focuses on the characteristics of agency workers in terms of gender, age, ethnicity, disability, and religion so far as the data allow. As yet there are no available data from the Labour Force Survey on sexual orientation. We have also broadened the analysis to also cover paid holiday entitlement and access to training as well as pay.

The characteristics of agency workers²⁸ are presented alongside median hourly earnings, holiday pay and access to training differentials/ differences to inform how equal pay provisions are likely to affect the equality in this part of the labour market, as narrowing these differentials/ differences is likely to be the main effect of the Directive. We focussed on these areas, given that they are likely to have the largest impact on agency workers and due to data availability.

1. Policy development

The recruitment sector supplies around 1.3 million agency workers to business in the UK, providing a crucial and flexible part of the UK labour market. It provides flexibility to both employers and workers and also serves as a stepping stone in into employment particularly for those who may be more vulnerable due to a lack of qualifications or skills. It is an opportunity to gain the valuable experience that they need within the workplace to secure a permanent job.

Government has recognised a disparity in the treatment of agency workers to that of directly employed staff undertaking the same work. In some cases, agency workers are paid less than permanent employees and kept on temporary contracts for months or even years. Government welcomed the agreement of the TUC and the CBI in May 2008 and the final agreement on the Agency Workers Directive in December 2008 that ensures that agency workers in the UK will be given a right to equal treatment after 12 weeks in a given job.

This Directive will provide flexibility, opportunity and fairness and aims to support those workers at risk of losing their confidence in low-paid jobs that are not secure and it will encourage greater support in the labour market in order to help them progress into better jobs.

The Government is committed to erasing child poverty and recognises that there is a direct link to parents who are in low-paid jobs. The role of work is crucial in escaping poverty and social exclusion, particularly when there is an increase in migrant workers who often have few choices when it comes to the type of work that is available to them.

The department provides “working in the UK” leaflets and they include basic information about the national minimum wage but we have also put together information to ensure that migrant workers are aware of their entitlement to the national minimum wage.

There are also guidance leaflets available in a range of languages. The national minimum wage helpline provides confidential advice about the minimum wage and workers who believe they are being underpaid can call the helpline to make a complaint. The helpline handles calls in over 100 languages so workers can call for information or to make a complaint in their own language if they prefer.

We launched the first policy consultation in May last year and completed the second in December. Over 300 organisations and individuals responded, representing all interests - Trade Unions, agencies, and employers of all sizes from both private and public sectors. We also held Consultation Events in London and the regions, enabling us to hear at first hand about the issues at stake from those who will be most affected by the legislation.

The regulations include special protections for agency workers who are pregnant, new mothers or breastfeeding. In cases where there is a risk to the health and safety of an agency worker who is pregnant, breastfeeding or a new mother there will be a requirement that the hirer makes adjustments to her working arrangements or where that is not reasonably practicable the agency will offer alternative work or pay the woman for the duration of the assignment. The offer of alternative work, or payment if no alternative work is available, will support some women who may otherwise have left an assignment because of a health and safety risk without a new assignment to go to. The regulations provide that a woman who does move to a new assignment in these circumstances will not be any worse off because of the move and her qualifying service will be retained.

²⁸ See BERR (now BIS) publication “Agency working in the UK: A review of the evidence”; www.berr.gov.uk/files/file48720.pdf

Qualifying service will also continue to accrue during any break in an assignment as a result of pregnancy or childbirth. This will continue for 26 weeks after the child is born. Service will also be protected during paternity, adoption and parental leave. These provisions will ensure that parents, but particularly new mothers, who take these periods of time off to care for their children are not disadvantaged because of the break. A woman who returns to an assignment after a maternity absence will be entitled to equal treatment.

The right to paid time off for ante-natal appointments will mean that women are not worse off because they need to attend these appointments which are important for the health of expectant mothers and their unborn babies.

2. Assessing the impact of the Directive on the equality strands

We present first of all an overview of the profile of agency workers as regards the equality strands and then consider the equality impact of the major elements of the implementation of the Directive, namely pay, paid holidays and training. It is important to remember that the data set out below provide only an indication of possible unequal treatment, as there will be other compositional factors such as occupation and sector that may affect the differences registered. Sample sizes are too small to allow further investigation and hence more detailed comparisons. Therefore a degree of caution should be exercised in interpreting these results and more research would be required to investigate further.

2.1 Characteristics of agency workers

- LFS/APS and the Survey of Recruitment Agencies (SORA) data show around 43 – 45 per cent of agency workers are female. According to REC data the proportion is higher at 58 per cent.
- Agency workers are predominantly from younger age groups: LFS/APS data show around 33 per cent of agency workers are 16 to 24 years old compared with 16 per cent of all employees. According to REC data the proportion is lower at 15 per cent. Over half (51 per cent) of agency workers are under 34 years of age, compared to 39 per cent of all employees from the LFS.
- Minority ethnic groups tend to be over-represented in terms of agency working: LFS/APS and REC data show around two-thirds of agency workers are white British compared with 85 per cent of all employees.
- The disabled tend to be under-represented as agency workers: LFS/APS and REC data show between 7 and 11 per cent of agency workers are disabled compared with 13 per cent of all employees. However, this result isn't statistically significant due to the small sample involved.
- According to the LFS/ APS, there is hardly any difference between agency workers and permanent employees in terms of religion. Christians make up the majority for both types of workers. The only exception is Muslims, since about 5 per cent of agency workers are part of this religious group but among permanent employees the share is smaller at just 3 per cent

2.2 By Main Policy Area

Summary

In terms of pay differentials, the analysis we have carried out on the Annual Population Survey suggests these are most likely to occur among full-time male and female agency workers (though more so among men), agency workers aged 25 and over and among non-White British agency workers. From this analysis there did not appear to be disproportionately large differentials by disability or religion.

Regarding paid holiday entitlement the greatest differentials are among female agency workers (especially those working part-time), agency workers aged 25 and over (again among part-timers), as well as to some extent Muslim agency workers. From the overall analysis there does not appear to be any large differentials by ethnicity or disability.

With respect to access to training, for female and male agency workers (but more so among men) and those older than 25 years the differences to the respective permanent comparator group are relatively large. In terms of disability and religion, disabled agency workers, those who do not belong to any religious group at all or to other religious beliefs are likely to have improved access to training.

As stated above, it should be stressed this is higher level analysis that can only provide an overall finding. From the data available it is not possible to report with any accuracy how these results vary once occupational and sectoral factors are taken into account. The pay variable in particular will be highly sensitive to this, although to a lesser extent so too will the paid holiday and training variables.

2.2.1 Pay

By gender

In terms of full-time median hourly earnings, male agency workers appear to have a greater wage differential at 75 per cent of the permanent comparator's level compared with 86 per cent among women. Therefore, male full-time agency workers are likely to gain more from the Directive than female workers. Among part-timers, both male and females compare better as their median hourly earnings are greater than that of the permanent comparator.

Table B5. Median hourly earnings of agency workers and permanent employees by gender and full-time/part-time split¹

	Median hourly earnings		
	Male	Female	All
(A) Agency workers			
Full time	£6.48	£6.86	£6.58
Part time	£6.17	£8.00	£7.14
All	£6.48	£7.03	£6.67
(B) Comparator: All permanent employees who have been with their company for less than 2 years²			
Full time	£8.62	£8.00	£8.33
Part time	£5.58	£5.95	£5.83
All	£7.96	£6.90	£7.40
(A/B) Hourly pay gap			
Full time	75%	86%	79%
Part time	111%	134%	122%
All	81%	102%	90%

Note: 1 All results are based on valid responses only.
2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2 per cent)
Source: Annual Population Survey Apr 2007 - Mar 2008

By age

Older agency workers appear to have a greater wage differential with respect to full-time median hourly earnings at 72 per cent for the 25-49 year olds and 82 per cent for those older than 50 years against the respective permanent comparator's level compared with 91 per cent among 16 - 24 year olds. Therefore older full-time agency workers are likely to gain more from the Directive than younger workers. Among part-timers, all ages compare better as their median hourly earnings are greater than the permanent comparator's level.

Table B6. Median hourly earnings of agency workers and permanent employees by age and full-time/part-time split¹

	Median hourly earnings			All
	16- 24	25 - 49	50 +	
(A) Agency workers				
Full time	£6.08	£6.94	£6.83	£6.58
Part time	£5.83	£8.15	£9.03	£7.14
All	£6.00	£7.14	£7.29	£6.67
(B) Comparator: All permanent employees who have been with their company for less than 2 years²				
Full time	£6.68	£9.63	£8.28	£8.33

Part time	£5.28	£6.25	£6.39	£5.83
All	£6.00	£8.61	£7.50	£7.40

(A/B) Hourly pay gap

Full time	91%	72%	82%	79%
Part time	110%	130%	141%	122%
All	100%	83%	97%	90%

Note: 1 All results are based on valid responses only.

2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

Source: Annual Population Survey Apr 2007 - Mar 2008

By ethnicity

In terms of median hourly earnings, white British full-time agency workers earn 81 per cent of the permanent comparator's level compared with 75 per cent among those who aren't. Therefore non-white or non-British full-time agency workers are likely to gain more from the Directive than white British workers. Among part-timers, both groups compare better as their median hourly earnings are greater than that of the permanent comparator.

Table B7. Median hourly earnings of agency workers and permanent employees by ethnicity and full-time/part-time split¹

	Median hourly earnings		
	White British	Other	All
(A) Agency workers			
Full time	£6.76	£6.25	£6.58
Part time	£7.50	£6.17	£7.14
All	£6.89	£6.25	£6.67
(B) Comparator: All permanent employees who have been with their company for less than 2 years²			
Full time	£8.38	£8.29	£8.33
Part time	£5.81	£5.97	£5.83
All	£7.39	£7.48	£7.40
(A/B) Hourly pay gap			
Full time	81%	75%	79%
Part time	129%	103%	122%
All	93%	84%	90%

Note: 1 All results are based on valid responses only.

2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

Source: Annual Population Survey Apr 2007 - Mar 2008

By disability

While these results are not statistically significant due to the small sample involved, in terms of full-time median hourly earnings those who are disabled (under the Disability Discrimination Act (DDA)) earn 87 per cent of the permanent comparator's level compared with 78 per cent among those who aren't. Therefore non-disabled full-time agency workers are likely to gain more from the Directive than disabled workers. Among part-timers, both groups appear to be better off as their median hourly earnings are greater compared to those of the respective permanent comparator.

Table B8. Median hourly earnings of agency workers and permanent employees by disability status and full-time/part-time split¹

	Median hourly earnings		All
	Disabled (DDA)	Not disabled	
(A) Agency workers			
Full time	£6.72	£6.57	£6.58
Part time	£6.69	£7.22	£7.14
All	£6.72	£6.67	£6.67
(B) Comparator: All permanent employees who have been with their company for less than 2 years²			
Full time	£7.73	£8.43	£8.33
Part time	£5.85	£5.82	£5.83
All	£6.86	£7.49	£7.40
(A/B) Hourly pay gap			
Full time	87%	78%	79%
Part time	114%	124%	122%
All	98%	89%	90%

Note: 1 All results are based on valid responses only.
2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)
Source: Annual Population Survey Apr 2007 - Mar 2008

By religion

Full-time agency workers of other religious beliefs and those with no religion at all have a greater differential at 76 per cent to the comparator group than those agency workers, who declare themselves to be Christians or Muslims. Hence these groups are likely to benefit more from the implementation of the Directive. Part-time agency workers appear to be better off than full-timers and the respective comparator group, except for Muslims, who are therefore, likely to benefit the most. The results for other religions should be considered with care, given that the sample size is relatively small.

Table B9. Median hourly earnings of agency workers and permanent employees by religion and full-time/part-time split¹

	Median hourly earnings				All
	Christians	Muslims	Other religions	No religion	
(A) Agency workers					
Full time	£6.57	£6.92	£8.00	£6.58	£6.58
Part time	£7.41	£5.83	£6.54	£7.14	£7.00
All	£6.67	£6.25	£7.00	£6.86	£6.67
(B) Comparator: All permanent employees who have been with their company for less than 2 years²					
Full time	£8.18	£8.18	£10.56	£8.56	£8.37
Part time	£5.84	£6.00	£6.00	£5.75	£5.83
All	£7.29	£6.93	£8.40	£7.67	£7.41
(A/B) Hourly Pay Gap					
Full time	80%	85%	76%	76%	79%
Part time	127%	97%	109%	124%	120%
All	91%	90%	83%	89%	90%

Note: 1 All results are based on valid responses only.

2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)
 Source: Source: Annual Population Survey Apr 2007 - Mar 2008

2.2.2 Holiday Pay

In the case of holiday entitlement to reflect the change from April 2009 onwards, when statutory leave entitlement becomes 28 days including bank holidays, from 24 days previously, the data has been 'uprated' as mentioned before in the overall Impact Assessment.

By gender

Female agency workers have a larger differential of 86 per cent compared with 92 per cent for all male agency workers in terms of mean paid holiday entitlements. Therefore, all female agency workers are likely to gain more from the implementation of the Directive. Part-timers in general will benefit more given their lower mean paid holiday entitlements, reflected in the larger differential to the comparator group.

Table B10. Mean paid holiday entitlement¹ between agency workers and permanent employees by gender and full-time/ part-time split²

	Mean paid holiday entitlement		All
	Male	Female	
(A) Agency workers			
Full time	30	29	29
Part time	22	21	22
All	28	26	27
(B) Comparator: All permanent employees who have been with their company for less than 2 years³			
Full time	31	33	32
Part time	24	26	25
All	31	30	30
(A/B) Holiday entitlement gap			
Full time	94%	88%	92%
Part time	91%	82%	85%
All	92%	86%	90%

Note: 1 Annual leave entitlement includes bank holidays. This changed to 28 days including bank holidays in April 2009.

2 All results are based on valid responses only.

3 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2 per cent)

Source: Labour Force Survey, Oct – Dec 2007

By age

Agency workers in the 25-49 age group appear to be at a greater disadvantage, given the larger differential of 88 per cent, compared with those of other age groups. Therefore, this age group is likely to gain more than younger or older agency workers. Again part-time workers of all ages have a higher differential against the respective permanent employees group and compared with full-timers, with the largest for agency workers older than 25 at 82 per cent. All part-timers are likely to receive more benefits from the Directive in terms of holiday entitlement but especially older part-time agency workers.

Table B11. Mean paid holiday entitlement¹ between agency workers and permanent employees by age and full-time/part-time split²

	Mean paid holiday entitlement			All
	16- 24	25 - 49	50 +	
(A) Agency workers				
Full time	29	29	30	29
Part time	21	22	21	22
All	27	28	27	27
(B) Comparator: All permanent employees who have been with their company for less than 2 years³				
Full time	31	33	31	32
Part time	23	27	26	25
All	29	32	29	30
(A/B) Holiday entitlement gap				
Full time	95%	90%	95%	92%
Part time	90%	82%	82%	85%
All	94%	88%	93%	90%

Note: 1 Annual leave entitlement includes bank holidays. This changed to 28 days including bank holidays in April 2009.

2 All results are based on valid responses only.

3 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

Source: Labour Force Survey, Oct - Dec 2007

By ethnicity

Non-British or non-white agency workers have a higher differential to the comparator group at 88 per cent compared with 91 per cent for those who are white and British. Hence, this group is likely to gain the most from the Directive. Part-time agency workers of both groups will also benefit, given a differential of around 85 and 86 per cent respectively compared with that of 92 per cent for full-timers.

Table B12. Mean paid holiday entitlement¹ between agency workers and permanent employees by ethnicity and full-time/part-time split²

	Mean paid holiday entitlement		All
	White British	Other	
(A) Agency workers			
Full time	29	29	29
Part time	22	21	22
All	28	27	27
(B) Comparator: All permanent employees who have been with their company for less than 2 years³			
Full time	32	32	32
Part time	26	25	25
All	30	30	30
(A/B) Holiday entitlement gap			
Full time	92%	92%	92%
Part time	85%	86%	85%
All	91%	88%	90%

Note: 1 Annual leave entitlement includes bank holidays. This changed to 28 days including bank holidays in April 2009.

2 All results are based on valid responses only.

3 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

Source: Labour Force Survey, Oct - Dec 2007

By disability

Disabled agency workers appear to be better off even without the Directive in terms of paid holiday entitlements, given that the differential for this group is smaller at 99 per cent compared with 89 per cent for those who are not disabled. Part-time agency workers, who are not disabled, will benefit more from the Directive given that disabled agency workers already have a slightly higher holiday entitlement when measured against the comparator.

Table B13. Mean paid holiday entitlement¹ between agency workers and permanent employees by disability status and full-time/part-time split²

	Mean holiday entitlement		All
	Disabled (DDA)	Not disabled	
(A) Agency workers			
Full time	30	29	29
Part time	27	21	22
All	29	27	27
(B) Comparator: All permanent employees who have been with their company for less than 2 years³			
Full time	31	32	32
Part time	26	25	25
All	29	31	30
(A/B) Holiday entitlement gap			
Full time	94%	91%	92%
Part time	104%	83%	85%
All	99%	89%	90%

Note: 1 Annual leave entitlement includes bank holidays. This changed to 28 days including bank holidays in April 2009.

2 All results are based on valid responses only.

3 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

Source: Labour Force Survey, Oct – Dec 2007

By religion

Agency workers across all religious beliefs are likely to gain from the Directive, but especially Muslims, who have the largest differential at 87 per cent in terms of mean paid holiday entitlement. Part-timers from all beliefs have a larger differential to the comparator group than full-time agency workers and will therefore, benefit more. The results for other religions should be considered with care given that the sample size is small.

Table B14. Mean paid holiday entitlement¹ between agency workers and permanent employees by religion and full-time/ part-time split²

	Mean paid holiday entitlement				All
	Christians	Muslims	Other religions	No religion	
(A) Agency workers					
Full time	29	28	29	29	29
Part time	22	20		21	22
All	27	26	29	28	27
(B) Comparator: All permanent employees who have been with their company for less than 2 years³					
Full time	32	32	32	32	32
Part time	26	23	23	25	25
All	30	29	30	30	30
(A/B) Holiday entitlement gap					
Full time	92%	89%	90%	92%	92%
Part time	84%	86%		87%	85%
All	89%	87%	96%	93%	90%

Note: 1 Annual leave entitlement includes bank holidays. This changed to 28 days including bank holidays in April 2009.

2 All results are based on valid responses only.

3 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

Source: Source: Labour Force Survey, Oct- Dec 2007

2.2.3 Access to training

LFS data shows that about 19 per cent (23 per cent using valid responses only) of agency workers had received job training in the three months prior to the survey being carried out. In comparison 29 per cent (40 per cent using valid responses only) of permanent employees had done so.

Samples for some of the groups included here are too small to be statistically significant, such as male and female part-time agency workers; part-time agency workers across all age groups as well as full-time 50+ agency workers; part-time British and non-British agency workers; all disabled agency workers as well as for all Muslim agency workers and those with other religious beliefs or no religious belief at all. Therefore, mainly the overall figures will be analysed in this section. Nevertheless, in the case of older full-time workers as well as disabled agency workers the sample size remains very small even for the total numbers. Hence these results should be considered with due care.

By gender

Access to training for both female and male agency workers seems to be worse than for the respective comparator. Men appear to be at an even greater disadvantage than women, since the difference to the comparator groups is much larger at 20 percentage points compared with 12 percentage points for female agency workers. Therefore, male agency workers are likely to benefit more than female ones.

Table B15. Access to training of agency workers and permanent employees by gender and full-time/ part-time split¹

	Access to training		All
	Male	Female	
(A) Agency workers			
Full time	17%	34%	23%
Part time	19%	27%	23%
All	18%	31%	23%
(B) Comparator: All permanent employees who have been with their company for less than 2 years²			
Full time	41%	49%	44%
Part time	27%	35%	33%
All	38%	43%	41%
(A-B) Training Gap			
Full time	-24%	-15%	-21%
Part time	-8%	-8%	-10%
All	-20%	-12%	-18%

Note: 1 All results are based on valid responses only.

2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2 per cent)

Source: Labour Force Survey, Oct – Dec 2007

By age

Across all age groups, agency workers appear to have less access to training. For older workers and those aged 25-49 years, the difference to the comparator groups is relatively large at 17 and 19 percentage points respectively. In contrast the gap between younger agency workers and permanent employees of the same age group is slightly smaller. Agency workers of all ages will benefit from the directive, but especially those who are 25 years or older.

Table B16. Access to training of agency workers and permanent employees by age and full-time/part-time split¹

	Access to training			All
	16- 24	25 - 49	50 +	
(A) Agency workers				
Full time	28%	22%	14%	23%
Part time	14%	27%	31%	23%
All	24%	24%	20%	23%
(B) Comparator: All permanent employees who have been with their company for less than 2 years²				
Full time	44%	45%	38%	44%
Part time	26%	37%	35%	33%
All	37%	43%	37%	41%
(A-B) Training Gap				
Full time	-16%	-23%	-24%	-21%
Part time	-12%	-10%	-4%	-10%
All	-13%	-19%	-17%	-18%

Note: 1 All results are based on valid responses only.

2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

Source: Labour Force Survey, Oct – Dec 2009

By ethnicity

With respect to ethnicity, white British agency workers appear worse off compared with non-British or non-white ones and the respective permanent employee group. Only 20 per cent of white British agency workers received training in the three months prior to the survey, against 29 per cent of those who are non-white or non-British and 41 per cent in the comparator group. White British agency workers are therefore likely to obtain greater benefits in terms of training than those who are neither British nor white.

Table B17. Access to training for agency workers and permanent employees by ethnicity and full-time/part-time split¹

	Access to training		All
	White British	Other	
(A) Agency workers			
Full time	20%	30%	23%
Part time	21%	28%	23%
All	20%	29%	23%
(B) Comparator: All permanent employees who have been with their company for less than 2 years²			
Full time	45%	41%	44%
Part time	33%	29%	33%
All	41%	38%	41%
(A-B) Training gap			
Full time	-25%	-11%	-21%
Part time	-12%	-1%	-10%
All	-21%	-9%	-18%

Note: 1 All results are based on valid responses only.

2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)
Source: Labour Force Survey, Oct – Dec 2007

By disability

Only 17 per cent of disabled agency workers received training in the three months prior to the survey compared with 24 per cent of those who are not disabled and 37 per cent of those in the disabled comparator group. Given the slightly larger difference to the comparator, disabled agency workers are likely to benefit more from the Directive in terms of access to training.

Table B18. Access to training of agency workers and permanent employees by disability status and full-time/part-time split¹

	Access to training		All
	Disabled (DDA)	Not disabled	
(A) Agency workers			
Full time	18%	24%	23%
Part time	14%	25%	23%
All	17%	24%	23%
(B) Comparator: All permanent employees who have been with their company for less than 2 years²			
Full time	41%	44%	44%
Part time	32%	33%	33%
All	37%	41%	41%
(A-B) Training gap			
Full time	-23%	-20%	-21%
Part time	-18%	-8%	-10%
All	-20%	-17%	-18%

Note: 1 All results are based on valid responses only.

2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

Source: Labour Force Survey, Oct – Dec 2007

By religion

Overall agency workers who belong to no religion at all or belong to other religious groups appear to have less access to training than other religious groups, with differences to the comparator groups of 20 and 23 percentage points respectively. Therefore, they are likely to benefit the most

Table B19. Access to training for agency workers and permanent employees by religion and full-time/ part-time split¹

	Access to training				All
	Christians	Muslims	Other religions	No religion	
(A) Agency workers					
Full time	24%	23%	16%	23%	23%
Part time	30%	0%	0%	9%	23%
All	25%	16%	14%	20%	24%
(B) Comparator: All permanent employees who have been with their company for less than 2 years²					
Full time	45%	37%	38%	45%	44%
Part time	34%	19%	37%	30%	33%
All	41%	30%	37%	40%	41%
(A-B) Training Difference					
Full time	-21%	-14%	-22%	-22%	-21%
Part time	-4%	-19%	-37%	-21%	-10%
All	-16%	-14%	-23%	-20%	-17%

Note: 1 All results are based on valid responses only.

2 Certain occupation groups were excluded in this comparator where only a small percentage of agency are found (i.e. less than 0.2%)

Source: Source: Labour Force Survey, Oct- Dec 2007

Monitoring and Evaluation

A review of the Agency Worker Directive will be carried out by 5 December 2013. This will involve assessing outcomes and impacts in order to understand the progress made since the implementation of the Directive. Monitoring the effects of the

changes by the equalities strands will be considered in the evaluation approach. The source for the evaluation is likely to be mainly the Labour Force Survey/ Annual Population Survey for consistency, but potentially also other relevant surveys and research that can be identified at the time.

Overall, monitoring by equalities strands will reveal how different groups compare under the Directive. It will therefore highlight any gaps/issues requiring additional attention for the groups considered to be 'disadvantaged' due to the policy changes.

The Agency Workers Regulations 2010: Transposition Note

This Transposition Note, in tabular form, explains how the Agency Workers Regulations 2010 (S.I. 2010/93) (the Regulations) transpose Directive 2008/104/EC of 19 November 2008 on temporary agency work (the Directive).

The table seeks to explain how the main elements of the Directive are being transposed in relation to Great Britain, including cross-references to the specific provisions of the Regulations being made by the Secretary of State for Business, Innovation and Skills.

These Regulations do more than is necessary to implement the Directive only in two respects.

First, the Directive is required to be implemented by 5th December 2011. The Regulations come into force on 1st October 2011, which is the common commencement date immediately preceding the date by which they are required to be implemented.

Second, the Regulations' extension to pregnant agency workers of the right to paid time off for ante-natal appointments and health and safety protections in respect of **all** relevant identified workplace risks, where those risks are not directly related to basic working and employment conditions, goes beyond what is strictly necessary for the implementation of the Directive. However, the Government believes it right to provide these protections in the context of legislation to improve the position of pregnant agency workers.

Transposition Table

Article	Objective	Implementation	Regulations Cross-reference
1	Sets out the scope of the Directive.	The Regulations reflect the scope of the Directive, but no specific implementation is required.	No specific implementation required.
2	Sets out the objectives of the Directive.	No implementation required.	
3	Defines terms used in the Directive.	The Regulations reproduce the definitions with certain modifications so as to make them consistent with domestic law	Regulations 2, 3 and 4
4	Requires Member States to review any restrictions or prohibitions on the use of temporary agency work, and provides that these can be justified only on the grounds of general interest (e.g. health and safety requirements at work).	The Government has reviewed legislation applying in Great Britain, after consultation with the social partners, and does not believe there are any restrictions or prohibitions on the use of temporary agency workers which are not justified. We will keep this under review and report the outcome to the Commission by the requisite deadline of 5th December 2011.	No specific implementation necessary.
5.1	The basic working and employment conditions of an agency worker during an assignment shall be the same as if they had been recruited directly.	The Regulations give the right to be given the same terms and conditions on pay, the duration of working time, night work, rest period, rest breaks and annual leave as the agency worker would have been entitled to if recruited directly. These apply after completion of the qualifying period (see Art.5.4 below).	Regulations 5 and 6
5.1	Protection of specified groups, and equal treatment to combat discrimination.	In relation to pregnant women and nursing mothers, certain rights have been extended to agency workers, in particular to provide that hirers will need to make adjustments to protect an agency worker who is pregnant or a new mother from identified risks. Where this is not reasonable it will fall to the agency to offer alternative work or, if this is not possible, pay the agency worker for the duration of the assignment. In relation to other groups mentioned in Article 5.1(a), and in relation to Article 5.1(b) no specific provision is needed to	Schedule 2, Parts 1 and 2

		implement as under the law in England, Scotland and Wales, the legislation in force on the protection of children and young people already applies to agency workers, and similarly for discrimination law.	
5.2	Pay between assignments by way of derogation from Article 5.1	The derogation is applied to an agency worker who has a permanent contract with a temporary work agency in the specified form, including a statement that the employee does not have any entitlement to the regulation 5 rights so far as they relate to pay. The Regulations also provide for a minimum permitted amount of pay between assignments.	Regulations 10 and 11
5.3	Derogation from equal treatment principles in Article 5.1 by way of collective agreement.	The Regulations do not make use of this derogation.	No implementation necessary.
5.4	Derogation from equal treatment principles in Article 5.1 by way of social partner agreement, at national level, including possible qualifying period.	The agreement of 20 May 2008 between CBI and TUC provides for a 12 week qualifying period. Details of how this qualifying period operates, including the effect of breaks between and during assignments, are set out in the Regulations.	Regulations 7 and 8
5.5	Member States are to take appropriate measures to prevent misuse, in particular successive assignments designed to circumvent the provisions of the Directive.	<p>A break of up to 6 weeks (or more than 6 weeks in certain specified circumstances) can be taken between or during assignments and this does not lead to the qualifying period starting again, or losing the entitlement where the 12 weeks has been completed.</p> <p>During an assignment the qualifying period only starts again where the agency worker is working in a new role that is substantively different and the worker has been informed in writing of the type of work they will be required to do in the new role.</p> <p>Where the assignments are structured to circumvent the provisions of the Regulations with regard to rights to basic working and employment conditions the worker can be treated as being entitled to</p>	Regulations 7, 8 and 9

		those rights, and tribunals can award an additional amount of up to £5,000 payable to the agency worker.	
6.1	Agency workers are to be informed of vacant posts in the hirer's undertaking.	The Regulations give agency workers the right to be informed of relevant vacant posts with the hirer to give them the same opportunity as a comparable worker to find permanent employment.	Regulation 13
6.2	Ensuring that restrictions (apart from reasonable recompense) on the conclusion of contracts of employment between agency workers and hirer after assignments are null and void.	Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 already makes restrictions upon an agency worker seeking work elsewhere than via the temporary work agency unlawful, permitting only a reasonable 'transfer fee' where an agency worker is recruited by the user undertaking.	No further implementation required.
6.3	Prevents temporary work agencies charging agency workers fees in exchange for arranging for them to be recruited by a user undertaking or for concluding a contract of employment after an assignment there.	Regulation 6 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 already prohibits restrictions upon an agency worker seeking work elsewhere via detrimental contractual terms – such as fees.	No further implementation required.
6.4	Agency workers are to be given access to collective facilities and amenities in the undertaking under the same conditions as directly recruited workers.	The Regulations give agency workers the right to be treated no less favourably than a comparable worker in relation to collective facilities and amenities (including canteen and child care facilities and transport services) provided by the hirer.	Regulation 12
7	Makes provision for agency workers to count towards employee number threshold under which representative bodies under Community and national law are to be formed at the temporary work agency or user undertaking.	The Regulations contain amendments to listed primary and secondary legislation, to count agency workers towards thresholds at which representative bodies are to be formed at a temporary work agency.	Schedule 2, Parts 1 and 2
8	Makes provision for disclosure of information relating to use of agency workers to representative bodies under Community and national law.	The Regulations contain amendments to listed primary and secondary legislation, to provide for disclosure of suitable information as to use of agency workers where	Schedule 2, Parts 1 and 2

		<p>information is to be disclosed to representatives in relation to the employment situation. In relation to health and safety issues, existing legislation provides for any necessary disclosure via regulation 7(4)(b) of the Management of Health and Safety at Work Regulations 1999.</p>	
10	<p>Member States must provide for appropriate penalties which must be effective, proportionate and dissuasive. Workers shall have adequate means of enforcing the obligations.</p>	<p>The Regulations contain provisions in relation to liability, restrictions on contracting out of the rights and duties under the Regulations, and the provision of information to support claims. Agency workers are protected against unfair dismissal or detriment as a result of bringing proceedings or exercising rights under the Regulations.</p> <p>Agency workers can bring a claim to an employment tribunal which can award compensation, and can recommend the hirer or agency take specific action.</p> <p>In most circumstances any award of compensation should not be less than two weeks' pay.</p> <p>Where assignments have been structured to circumvent the provisions of the regulations, an additional award of up to £5,000 can be made (see Article 5.5 above).</p>	<p>Regulations 14 to 20</p>