

Title: Impact Assessment on Enforcement of Posted Workers Directive IA No: BISLM001 Lead department or agency: Department for Business, Innovations and Skills Other departments or agencies:	Impact Assessment (IA)		
	Date: 23/07/2015		
	Stage: Consultation		
	Source of intervention: EU		
	Type of measure: Secondary legislation		
Contact for enquiries: Mansi Konar (mansi.konar@bis.gsi.gov.uk)			
Summary: Intervention and Options		RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-£0.17m	-£0.13m (best estimate)	£0.02m	NO	N/A

What is the problem under consideration? Why is government intervention necessary?
 In 2014, Member States and the European Parliament adopted the Enforcement Directive 2014/67/EU (the 2014 Enforcement Directive), which was agreed under a single market legal base. The Directive ensures that Member States are applying the existing compulsory conditions where posted workers can enforce their rights, and that the appropriate mechanisms are put in place to support cross-border enforcement between Member States. It was adopted in May 2014 and must be implemented by June 2016.

What are the policy objectives and the intended effects?
 The overall objective of the Directive is to ensure that the rights of posted workers are respected and effectively enforced, that posting businesses are aware of their obligations to posted workers, and that the competent authorities in Member States co-operate to ensure abuse is tackled effectively. The UK's objective in implementing the Directive is to ensure effective and proportionate enforcement that is in line with the existing UK mechanism of enforcing employment protections and limits the burden on business.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Article 9 relates to the information that Member States request from companies posting workers to the UK. For this Article two options were considered: 1) Do nothing (preferred) and 2) Impose measures that help monitor number of posted workers. Article 12 introduces a new requirement for Member States to ensure that posted workers in the construction sector can recover unpaid minimum wages from the contractor one up in the supply chain. For this Article three options were considered 1) Do nothing was not a feasible option as this will lead to the UK being infringed, 2) Introduce individual right for posted workers to take a claim against the contractor for underpayment of National Minimum Wage (NMW), 2) Extend existing rules so that HMRC can approach the contractor for underpayment of NMW of posted worker and 3) Introduce a sanction against the contractor if the employer does not pay NMW to a posted worker. For Article 12 options two scenarios for scope were considered: 1) Posted workers in the construction industry and 2) All workers in the construction industry. In addition under Article 5, 6, 7 and 10 there will be costs to government from providing more information to posted workers on their rights, cross border enforcement of penalties and cooperation arrangements for information exchange.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2019					
Does implementation go beyond minimum EU requirements?			NO		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

**Signed by the responsible
 SELECT SIGNATORY:**

_____ **Date:** _____

Summary: Analysis & Evidence

Policy Option 1 (Scenario1)

Description: Implement Article 12 via creation of individual rights (under scenario 1 this only applies to posted workers in construction)

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) -£0.17m		
			Low: -£0.17m	High -£0.17m	Best estimate: -£0.17m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£	£0.02m	£0.2m
High	£	£0.03m	£0.2m
Best Estimate	£	£0.02m	£0.2m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the posted worker for unpaid wages amounting to any outstanding net remuneration up to the minimum rates of pay in the event that these are not received by the employer. These wage payments will be costs to the contractor (£2K to £7.4K p.a.). In addition the contractors (£12.1K per annum) and the employees (£4.3K pa) could face administrative costs of tribunal cases. The cost to the exchequer is estimated to be £2.2K per annum.

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost to contractors if they carry out additional due diligence.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£	£0.002m	£0.02m
High	£	£0.007m	£0.07m
Best Estimate	£	£0.005m	£0.04m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to employees in the form of recouped lost wages. We estimate this to be £2K to £7.4K p.a.

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on employers/subcontractors, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<ul style="list-style-type: none"> Estimates assume that no posted workers will have enforced their NMW by making a complaint to HMRC against their direct employer under the existing enforcement arrangements (the option will not allow for double recovery from the employer and contractor). Estimates represent the maximum costs to business as they assume that no cases will pass the due diligence test. We assume that all contractors contest the claims in an Employment Tribunal rather than pay the worker. The analysis does not take account of any subsequent contractual claim that a contractor may choose to take against the direct employer for recovery of costs. 		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: 0.02m	NO	N/A
Benefits:		
Net: -0.02m		

Summary: Analysis & Evidence

Policy Option 1 (Scenario 2)

Description: Implement Article 12 via creation of individual right (under scenario 2 this applies to all workers in construction)

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV))		
			Low: -£170m	High: -£170m	Best Estimate: -£170m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£		£25.2m	£234.4m
High	£		£25.2m	£234.4m
Best Estimate	£		£25.2m	£234.4m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the posted worker for unpaid wages amounting to any outstanding net remuneration up to the minimum rates of pay in the event that these are not received by the employer. These wage payments will be costs to the contractor (£6.9m p.a.). In addition the contractors (£11.3m per annum) and the employees (£4.1m p.a.) could face administrative costs of tribunal cases. The cost to the exchequer is estimated to be £2.9m per annum.

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost of due diligence required to be undertaken by employers.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£		£6.9m	£64.3m
High	£		£6.9m	£64.3m
Best Estimate	£		£6.9m	£64.3m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to employees in the form of recouped lost wages. We estimate this to be £6.9m

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on employers/subcontractors, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

- Estimates assume that no posted workers will have enforced their NMW by making a complaint to HMRC against their direct employer under the existing enforcement arrangements (the option will not allow for double recovery from the employer and contractor).
- Estimates represent the maximum costs to business as they assume that no cases will pass the due diligence test. We assume that all contractors contest the claims in an Employment Tribunal rather than pay the worker.
- The analysis does not take account of any subsequent contractual claim that a contractor may choose to take against the direct employer for recovery of costs.
- Scenario 2 assumes that all workers in construction (who are paid below NMW) are a part of a supply chain.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 15.6m	Benefits: N/A	Net: -£15.6m	NO	N/A

Summary: Analysis & Evidence

Policy Option 2 (scenario 1)

Description: Implement Article 12 via the HMRC enforcement route (under scenario 1 this only applies to posted workers in construction)

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV))		
			Low: -£0.35m	High: -£0.35m	Best Estimate: -£0.35m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£		£0.05m	£0.4m
High	£		£0.07m	£0.6m
Best Estimate	£		£0.06m	£0.5m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the posted worker for unpaid wages amounting to any outstanding net remuneration up to the minimum rates of pay in the event that these are not received by the employer. These wage payments will be costs to the contractor (£7.6K to £27.8K p.a.). The cost to the exchequer is estimated to be £37.9K per annum.

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost of due diligence required to be undertaken by contractors. This assessment does not take into account the cost to contractors of engaging with the HMRC investigation process and of defending the case. Also there will be costs to exchequer if the contractor decides to appeal.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£		£0.008m	£0.07m
High	£		£0.028m	£0.26m
Best Estimate	£		£0.018m	£0.17m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to employees in the form of recouped lost wages. We estimate this to be £7.6K to £27.8K

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on employers/subcontractors, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

- Estimates represent the maximum costs to business as they assume that no cases will pass the due diligence test.
- Estimates assume that in all cases, HMRC will enforce against the contractor rather than the direct employer (the option will not allow for double recovery from the employer and contractor).

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.02m	Benefits: N/A	Net: -0.02m	NO	N/A

Summary: Analysis & Evidence

Policy Option 2 (scenario 2)

Description: Implement Article 12 via the HMRC enforcement route (under scenario 2 this applies to all workers in construction)

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV))		
			Low: -£357.7m	High: -£357.7m	Best Estimate: -£357.7m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£		£66.6m	£620.2m
High	£		£66.6m	£620.2m
Best Estimate	£		£66.6m	£620.2m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the posted worker for unpaid wages amounting to any outstanding net remuneration up to the minimum rates of pay in the event that these are not received by the employer. These wage payments will be costs to the contractor of £28.1m p.a. The cost to the exchequer is estimated to be £38.4m per annum.

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost of due diligence required to be undertaken by contractors. This assessment does not take into account the cost to contractors of engaging with the HMRC investigation process and of defending the case. Also there will be costs to exchequer if the contractor decides to appeal.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£		£28.2m	£262.5m
High	£		£28.2m	£262.5m
Best Estimate	£		£28.2m	£262.5m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to employees in the form of recouped lost wages. We estimate this to be £28.2m p.a.

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on employers/subcontractors, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

- Estimates represent the maximum costs to business as they assume that no cases will pass the due diligence test.
- Estimates assume that in all cases, HMRC will enforce against the contractor rather than the direct employer (the option will not allow for double recovery from the employer and contractor).
- Scenario 2 assumes that all workers in construction (who are paid below NMW) are a part of a supply chain.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £24.1m	Benefits: N/A	Net: -£24.1m	NO	N/A

Summary: Analysis & Evidence

Policy Option 3 (Scenario 1)

Description: Implement Article 12 via the sanction route (under scenario 1 this only applies to posted workers in construction)

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.35m	High: -£0.35m	Best Estimate: -£0.35m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£		£0.05m	£0.46m
High	£		£0.05m	£0.46m
Best Estimate	£		£0.05m	£0.46m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the posted worker for unpaid wages amounting to any outstanding net remuneration up to the minimum rates of pay in the event that these are not received by the employer. The cost to the exchequer is estimated to be £37.9K per annum. The sanction on contractors is estimated to be in the region of £11.7K.

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost to the contractor of defending imposition of a sanction or providing information to assist the investigations

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£		£0.01m	£0.11m
High	£		£0.01m	£0.11m
Best Estimate	£		£0.01m	£0.11m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to the exchequer from sanctions. These are estimated to be £11.7K

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on employers/subcontractors, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Article 12:

- Estimates represent the maximum costs to business as they assume that no cases will be successfully defended.
- Estimates assume that in all cases, HMRC will not be successful in recovering wage arrears from the direct employer.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.01m	Benefits: N/A	Net: -£0.01m	NO	N/A

Summary: Analysis & Evidence

Policy Option 3 (scenario 2)

Description: Implement Article 12 via the sanction route (under scenario 2 this applies to all workers in construction)

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years	Net Benefit (Present Value (PV))		
			Low: -£357.7m	High: -£357.7m	Best Estimate:- £357.7m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£		£50.2m	£467.8m
High	£		£50.2m	£467.8m
Best Estimate	£		£50.2m	£467.8m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the posted worker for unpaid wages amounting to any outstanding net remuneration up to the minimum rates of pay in the event that these are not received by the employer. The cost to the exchequer is estimated to be £38.4m per annum. The sanction on contractors is estimated to be in the region of £11.8m.

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost to the contractor of defending imposition of a sanction or providing information to assist the investigations

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£		£11.8m	£110.1m
High	£		£11.8m	£110.1m
Best Estimate	£		£11.8m	£110.1m

Description and scale of key monetised benefits by 'main affected groups'

The only beneficiary would be the exchequer in the form of penalties imposed to contractors. We estimate this to be £11.8m.

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on direct employers/subcontractors, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

- Estimates represent the maximum costs to business as they assume that no cases will be successfully defended.
- Estimates assume that in all cases, HMRC will not be successful in recovering wage arrears from the direct employer.
- Scenario 2 assumes that all workers (who are paid below NMW) are a part of a supply chain.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 10.1m	Benefits: N/A	Net: -£10.1m	NO	N/A

Summary: Analysis & Evidence

Policy Option 4 (Scenario 1)

Description: Implement Article 12 via creation of individual rights (under scenario 1 this only applies to posted workers in construction); Implement Article 9 by requiring direct employers posting workers to the UK to provide information on all posted workers

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£3.5m	High: -£3.5m	Best Estimate: -£3.5m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£	£0.378m	£3.5m
High	£	£0.383m	£3.6m
Best Estimate	£	£0.380m	£3.5m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up the supply chain is liable to the posted worker for unpaid wages amounting to any outstanding net remuneration equalling the minimum rates of pay. These wage payments will be costs to the contractor (£2K to £7.4K p.a.). In addition the contractors (£12.1K pa) and the employees (£4.3K pa) could face administrative costs of tribunal cases. The cost to the exchequer is estimated to be £2.2K pa. Costs to direct employers from providing information on posted workers to the UK authorities is £357.1K pa

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost to contractors if they carry out additional due diligence.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£	£0.002m	£0.02m
High	£	£0.007m	£0.07m
Best Estimate	£	£0.005m	£0.04m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to employees in the form of recouped lost wages. We estimate this to be £2K to £7.4K p.a.

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on direct employers, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ direct employers using posted workers (secondary impacts).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

- Estimates assume that no posted workers will have enforced their NMW by making a complaint to HMRC against their direct employer under the existing enforcement arrangements (the option will not allow for double recovery from the employer and contractor).
- Estimates represent the maximum costs to business as they assume that no cases will pass the due diligence test. We assume that all contractors contest the claims in an Employment Tribunal rather than pay the worker.
- The analysis does not take account of any subsequent contractual claim that a contractor may choose to take against the direct employer for recovery of costs.
- We assume the direct employers have a subsidiary company in the UK (i.e. they fall under the category of multinationals) and as the latter are UK resident companies we include their costs (under Article 9) as a part of the NPV

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0.3m	Benefits: N/A	Net: -£0.3m	NO	N/A

Summary: Analysis & Evidence

Policy Option 4 (Scenario 2)

Description: Implement Article 12 via creation of individual rights (under scenario 2 this applies to all workers in construction); implement Article 9 requiring direct employers posting workers to the UK to provide UK authorities with information on all posted workers

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) £m		
			Low:- £173.4m	High: - £173.4m	Best Estimate: - £173.4m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	£	£25.5m	£237.8m
High	£	£25.5m	£237.8m
Best Estimate	£	£25.5m	£237.8m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the posted worker for unpaid wages amounting to any outstanding net remuneration up to the minimum rates of pay in the event that these are not received by the employer. These wage payments will be costs to the contractor (£6.9m p.a.). In addition the contractors (£11.3m per annum) and the employees (£4.1m pa) could face administrative costs of tribunal cases. The cost to the exchequer is estimated to be £2.8m per annum. The cost to direct employers from providing information on posted workers to the UK authorities is £357.1K p.a.

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost of due diligence required to be undertaken by employers.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	£	£6.9m	£64.3m
High	£	£6.9m	£64.3m
Best Estimate	£	£6.9m	£64.3m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to employees in the form of recouped lost wages. We estimate this to be £6.9m.

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on direct employers/subcontractors, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

- Estimates assume that in all cases, HMRC will not be successful in recovering wage arrears from the direct employer.

Estimates represent the maximum costs to business as they assume that no cases will pass the due diligence test. We assume that all contractors contest the claims in an Employment Tribunal rather than pay the worker. The analysis does not take account of any subsequent contractual claim that a contractor may choose to take against the direct employer for recovery of costs.

- Scenario 2 assumes that all workers in construction (who are paid below NMW) are a part of a supply chain.
- We assume the direct employers have a subsidiary company in the UK (i.e. they fall under the category of multinationals) and as the latter are UK resident companies we include their costs (under Article 9) as a part of the NPV

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: £15.9m	Benefits: N/A	Net: -£15.9m	NO	N/A

Summary: Analysis & Evidence

Policy Option 5 (Scenario 1)

Description: Implement Article 12 via the HMRC enforcement route (under scenario 1 this only applies to posted workers in construction); implement Article 9 requiring direct employers posting workers to the UK to provide UK authorities with information on all posted workers

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£3.7m	High: -£3.7m	Best Estimate: -£3.7m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	£	£0.4m	£3.8m
High	£	£0.4m	£3.9m
Best Estimate	£	£0.4m	£3.9m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the posted worker for unpaid wages amounting to any outstanding net remuneration up to the minimum rates of pay in the event that these are not received by the employer. These wage payments will be costs to the contractor (£7.6K to £27.8K p.a.). The cost to the exchequer is estimated to be £37.9K per annum. Costs to direct employers from providing information on posted workers to the UK authorities is £357.1K pa

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost of due diligence required to be undertaken by contractors. This assessment does not take into account the cost to contractors of engaging with the HMRC investigation process and of defending the case. Also there will be costs to exchequer if the contractor decides to appeal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	£	£0.008m	£0.07m
High	£	£0.028m	£0.26m
Best Estimate	£	£0.018m	£0.17m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to employees in the form of recouped lost wages. We estimate this to be £7.6K to £27.8K

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on direct employers, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks Discount rate (%)

3.5

- Estimates represent the maximum costs to business as they assume that no cases will pass the due diligence test.
- Estimates assume that in all cases, HMRC will enforce against the contractor rather than the direct employer (the option will not allow for double recovery from the employer and contractor).
- We assume the direct employers have a subsidiary company in the UK (i.e. they fall under the category of multinationals) and as the latter are UK resident companies we include their costs (under Article 9) as a part of the NPV

BUSINESS ASSESSMENT (Option 6)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: £0.3m	Benefits: N/A	Net: -£0.3m	NO	N/A

Summary: Analysis & Evidence

Policy Option 5 (Scenario 2)

Description: Implement Article 12 via the HMRC enforcement route (under scenario 2 this applies to all workers in construction); implement Article 9 requiring direct employers posting workers to the UK to provide UK authorities with information on all posted workers

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV))		
			Low:- £361m	High: - £361m	Best Estimate: - £361m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£		£66.9m	£623.5m
High	£		£66.9m	£623.5m
Best Estimate	£		£66.9m	£623.5m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the worker for unpaid wages amounting to any outstanding net remuneration equalling the minimum rates of pay and/or contributions in the event that these are not received by the employer. These wage payments will be costs to the contractor of £28.1m p.a. The cost to the exchequer is estimated to be £38.4m per annum. Costs to direct employers from providing information on posted workers to the UK authorities is £357.1K p.a.

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost of due diligence required to be undertaken by contractors. This assessment does not take into account the cost to contractors of engaging with the HMRC investigation process and of defending the case. Also there will be costs to exchequer if the contractor decides to appeal. or the cost of engaging with the investigation process.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£		£28.2m	£262.5m
High	£		£28.2m	£262.5m
Best Estimate	£		£28.2m	£262.5m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to employees in the form of recouped lost wages. We estimate this to be £28.2m

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on direct employers, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

- Estimates represent the maximum costs to business as they assume that no cases will pass the due diligence test.
- Estimates assume that in all cases, HMRC will enforce against the contractor rather than the direct employer (the option will not allow for double recovery from the employer and contractor).
- Scenario 2 assumes that all workers (who are paid below NMW) are a part of a supply chain.
- We assume the direct employers have a subsidiary company in the UK (i.e. they fall under the category of multinationals) and as the latter are UK resident companies we include their costs (under Article 9) as a part of the NPV

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: 24.4m	Benefits: N/A	Net: -£24.4m	NO	N/A

Summary: Analysis & Evidence

Policy Option 6 (Scenario 1)

Description: Implement Article 12 via the sanction route (under scenario 1 this only applies to posted workers in construction); implement Article 9 by requiring direct employers posting workers to the UK to provide information on all posted workers

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£3.7m	High: -£3.7m	Best Estimate: -£3.7m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	£	£0.4m	£3.8m
High	£	£0.4m	£3.8m
Best Estimate	£	£0.4m	£3.8m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the worker for unpaid wages amounting to any outstanding net remuneration equalling the minimum rates of pay and/or contributions in the event that these are not received by the employer. The cost to the exchequer is estimated to be £37.9K per annum. The sanction on contractors is estimated to be £11.6K. Costs to direct employers from providing information on posted workers to the UK authorities is £357.1K pa

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost to the contractor of defending imposition of a sanction or providing information to assist the investigations.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	0	£0.01m	£0.11m
High	0	£0.01m	£0.11m
Best Estimate	0	£0.01m	£0.11m

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits to exchequer from sanctions. These are estimated to be £11.7K

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on direct employers, reducing the incidence of non-payment of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks (%)

Discount rate 3.5

- Estimates represent the maximum costs to business as they assume that no cases will be successfully defended.
- Estimates assume that in all cases, HMRC will not be successful in recovering wage arrears from the direct employer.
- We assume the direct employers have a subsidiary company in the UK (i.e. they fall under the category of multinationals) and as the latter are UK resident companies we include their costs (under Article 9) as a part of the NPV

BUSINESS ASSESSMENT (Option 7)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: £0.3m	Benefits: N/A	Net: -£0.3m	NO	N/A

Summary: Analysis & Evidence

Policy Option 6 (Scenario 2)

Description: Implement Article 12 via the sanction route (under scenario 2 this applies to all workers in construction); implement Article 9 requiring direct employers posting workers to the UK to provide UK authorities with information on all posted workers

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) £m		
			Low:- £361m	High: - £361m	Best Estimate: - £361m

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£	£50.6m	£471.1m
High	£	£50.6m	£471.1m
Best Estimate	£	£50.6m	£471.1m

Description and scale of key monetised costs by 'main affected groups'

The directive requires Member States to ensure that, in the construction industry, the contractor one up in the supply chain is liable to the worker for unpaid wages amounting to any outstanding net remuneration equalling the minimum rates of pay and/or contributions in the event that these are not received by the employer. The cost to the exchequer is estimated to be £38.4m per annum. The sanction on contractors is estimated to be £11.8m. Costs to direct employers from monitoring posted workers is £357.1K p.a.

Other key non-monetised costs by 'main affected groups'

It has not been possible to estimate the cost to the contractor of defending imposition of a sanction or providing information to assist the investigations

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£	£11.8m	£110.1m
High	£	£11.8m	£110.1m
Best Estimate	£	£11.8m	£110.1m

Description and scale of key monetised benefits by 'main affected groups'

The only beneficiary would be the exchequer in the form of penalties imposed to contractors. We estimate this to be £11.8m.

Other key non-monetised benefits by 'main affected groups'

The policy will incentivise contractors to carry out due diligence on employers/subcontractors, reducing the incidence of non-payments of wages (secondary impacts). However these might be netted off by contractors being less inclined to employ employers/subcontractors using posted workers (secondary impacts).

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

- Estimates represent the maximum costs to business as they assume that no cases will be successfully defended.
- Estimates assume that in all cases, HMRC will not be successful in recovering wage arrears from the direct employer.
- Scenario 2 assumes that all workers (who are paid below NMW) are a part of a supply chain.
- We assume the direct employers have a subsidiary company in the UK (i.e. they fall under the category of multinationals) and as the latter are UK resident companies we include their costs (under Article 9) as a part of the NPV

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of	Measure qualifies as
Costs: £10.4m	NO	N/A
Benefits: N/A		
Net: -£10.4m		

FULL EVIDENCE BASE

A. BACKGROUND

1. There are two Directives on the posting of workers. The first is the Posted Workers Directive 96/71/EC ('the 1996 Framework Directive'), which was agreed under a single market legal base with the aims of giving companies the ability to post workers across the EU in order that they have the freedom to provide services across the EU and guaranteeing that the rights and working conditions of posted workers are protected throughout the European Union. It sets out posted workers' entitlements to a set of compulsory employment rights in the country they are posted to, for example, national minimum wage rates and maximum work periods. A list of the rights which are applicable is at Annex B.
2. In March 2012 the European Commission brought forward further proposals for an Enforcement Directive following concerns raised by some Member States that the minimum protections outlined in the 1996 Framework Directive were not being fully complied with in relation to, for example, false self-employment and less-favourable working conditions. To address this, the Commission proposed additional legislation to improve the monitoring of postings and to improve the way existing rules on posted workers were complied with. The Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services ('the 2014 Enforcement Directive') was adopted in May 2014 and must be implemented by 18 June 2016¹.

B. PROBLEM AND RATIONALE FOR INTERVENTION

3. In March 2012 the European Commission proposed new rules to increase the protections for workers temporarily posted abroad. Findings suggested that minimum employment and working conditions were often not respected for the one million or so posted workers in the EU². To address the specific issues of abuse identified in the Commission's report, where workers were not able to enjoy their full rights in terms of for example, pay or holidays, especially in the construction sector, the Commission put forward proposals as part of an enforcement Directive to increase monitoring and compliance and to improve the way existing rules on posted workers were applied in practice. The goal of the Commission's proposals

¹ The Commission's proposal and its Impact Assessment as well as its Revision of the legislative framework concerning the posting of workers in the context of the provision of services are available from:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0131:FIN:EN:PDF>
<http://ec.europa.eu/social/BlobServlet?docId=7481&langId=en>
<http://ec.europa.eu/social/BlobServlet?docId=7519&langId=en>

² Report for the Commission Services on the Implementation of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services
<http://ec.europa.eu/social/BlobServlet?docId=4621&langId=en>

was to ensure a level playing field between the businesses involved. The outcome of this was the 2014 Enforcement Directive. The Enforcement Directive does not impose a particular enforcement regime and accommodates the range of existing approaches taken by Member States.

The current UK enforcement regime

4. The rights that posted workers are entitled to under the 1996 Framework Directive are:
 - maximum work periods and minimum rest periods;
 - minimum paid annual holidays;
 - minimum rates of pay, including overtime rates;
 - the conditions for hiring out workers, in particular the supply of workers by temporary employment firms;
 - health, safety and hygiene at work;
 - protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, children and young people; and
 - equality of treatment between men and women and other non-discrimination provisions.
5. Posted workers in the UK are already entitled to these rights and have access to the same routes to redress when things go wrong as any other worker in the UK. The majority of employment rights are self-enforced by the worker taking a claim to Employment Tribunal and posted workers are also entitled to bring claims this way (having gone to early conciliation first). Some employment rights are enforced by the State – for example, Her Majesty’s Revenue and Customs inspect and enforce the National Minimum Wage, the Employment Agencies Standards inspectorate enforce [get some language from Paula or Debs] and the Health and Safety Executive monitor and prosecute in relation to the working time regulations.
6. However there are two provisions within the Enforcement Directive that have particular scope to impose costs on business. Article 9 sets limits on the administrative requirements and control measures that a member state can use in relation to posting and enables Member States to request specific information from overseas employers (service providers) in relation to posted workers. The UK does not currently collect this information for all posted workers and any new burden would fall on overseas employers posting workers to the UK rather than UK based employers. Under Article 12 Member States must ensure that posted workers employed in the construction industry are able to claim against their employer’s immediate contractor (i.e. one up in the sub-contracting chain) for unpaid wages amounting to

any outstanding net remuneration equalling the minimum rates of pay and/or contributions due to common funds or institutions of social partners. The Directive allows for the defence of due diligence on the part of the contractor. Alternatively, it is open to Member States to impose sanctions on the contractor to prevent fraud and abuse. One or other option must be adopted. We do not currently have any system of subcontracting liability in the UK for employment rights.

C. OBJECTIVES

7. The overall objective of the Enforcement Directive is to ensure that the rights of posted workers are respected and enforced, and to ensure effective cross-border co-operation to tackle fraud and abuse. One of the main reasons the Enforcement Directive was brought forward was to enable posted workers to enforce their employment rights and to deal with the concerns raised by some Member States that employers have been claiming that a posted worker is self-employed in order to avoid employment rights as well as paying tax and social security contributions.
8. The majority of measures in the Enforcement Directive apply to Member States and their Competent Authorities – i.e. those bodies responsible for monitoring and enforcing the rules, such as the Health and Safety Executive. The areas where burdens may fall on business are on subcontracting liability in Article 12, and any information may ask employers to provide were you to decide to introduce active monitoring of postings. Member States do not necessarily have to introduce specific measures or legislate in the areas set out in the Enforcement Directive if their existing systems are adequate to ensure compliance with the 1996 Framework Directive and the Enforcement Directive. The Commission has been clear that any new measures introduced by member states to implement the Directive should be justified and proportionate, which will allow the UK to consider implementing that Directive in a way which does not create burdens on UK businesses. We will assess the options for implementation and implications in further advice.

D. OPTIONS

9. We have considered the options for implementing articles 9 and 12. Under Article 9, overseas employers could be required to provide monitoring information on posted workers. Under Article 12, if a posted worker is not paid by their employer, the contractor (i.e. one up the supply chain) is liable to pay the national minimum wage element of the wages owed.
10. For Article 9 two options are under consideration
 - **Option a₉** - Do nothing
 - **Option b₉** - Impose control measures which would require employers in other member states to provide information on workers they post to the UK

11. For Article 12 four options are under consideration

- **Option A₁₂** – Do nothing
- **Option B₁₂** - Introduce an individual right for posted workers to take a claim against the contractor for underpayment of National Minimum Wage (NMW) through an Employment Tribunal (preferred)
- **Option C₁₂** - Extend existing rules so that HMRC can approach the contractor for underpayment of NMW to posted worker
- **Option D₁₂** - Introduce a sanction against the contractor if the employer does not pay NMW to a posted worker

12. There are also other costs imposed on government by the Directive. These relate to Article 5 which requires Member States to make available information (for free to posted workers) about the statutory minimum employment rights in the host state (i.e. state to which the worker is posted³) and articles 6, 7 and 10 of the Directive that imposes costs to government from cross border information exchange.

E. ANALYSIS OF OPTIONS

Evidence on posted workers

13. Very little evidence exists on the number of posted workers in the UK. The UK does not collect information on the flow of posted workers to and from the country. The main evidence available on the volume of posted workers is taken from the Commission's report which uses portable documents A1 (PD A1), previously the EO1 certificate, issued by EU countries as a proxy indicator of a posting situation. PD A1 is issued when a worker or a self-employed person goes to work in another European Economic Area (EEA) country. The PD A1 is also used when a person is employed in more than one EEA country. Under EU regulations on co-ordination of social security systems a person is subject to the social security system of one country at any one time. For example, John is a worker in the UK and already contributes to the UK social security system. If he is posted to France he will request an A1 form from the UK competent authority that will exempt him from contributing to the social security system in France (as long as he continues to pay social security in the UK).

14. Using A1 documents to monitor postings in the UK is a proxy. PD A1 posting figures represent posted workers that are entitled to and obligated to contribute

³ In the UK we understand 'terms and conditions of employment' to mean those terms agreed between an employer and employee to provide services – usually as set out in a contract of employment. This may contain terms which go beyond statutory minimum rights, such as a rate of pay above the national minimum wage. Whilst those terms and conditions which go beyond the statutory minimum are not covered by the Enforcement Directive, they are enforceable through an Employment Tribunal.

towards an EU social security system. So by default it does not cover all postings. It does not include those who do not get an A1 form because of the short duration of their posting⁴. It also does not include posted workers that are not entitled to an A1 form because they do not fulfil the qualifying requirements under social security legislation⁵. Lastly, an individual posted worker could be issued with two A1 certificates (a situation where the worker has more than one posting). However, A1 data still helps to capture the number of postings which is what we are interested in when we look at impacts⁶.

15. Based on PD A1 documents the flow of postings to and from the UK are presented in the table below.

TABLE 1 : NUMBER OF POSTINGS BASED ON PD A1 DATA

	2008	2009	2010	2011	2012	2013
Postings to UK	37,733	34,760	34,321	37,247	40,366	43,522
Postings from UK	36,436	36,436	32,109	35,368	33,148	29,935

16. For the purpose of the analysis we based the number of workers posted into the UK (43,522) on PD A1 data to estimate the impacts of implementing the Directive⁷. Note that these figures show that the volume of postings to and from the UK is substantially lower than some other Member States, for example, France and Germany⁸. In 2013, the overall number of postings from France was 123,580 and from Germany was 227,008. Postings to France in 2013 totalled to 182, 219 and to Germany 373,666 in 2013⁹. In comparison postings to and from the UK in 2013 was 43,522 and 29,935 respectively¹⁰.

⁴ This might include workers who go for a very short posting (days versus months) and might not bother to get a PDA1

⁵ The presented data are not data on postings according to the "posting" definition of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. The conditions which must be fulfilled in order to qualify as posted worker according to EU rules on the coordination of social security systems are fundamentally different from those under Directive 96/71/EC (e.g. strict time limitation of maximum 24 months applies in the social security field). A posted worker in the framework of the provision of services might not always fulfil the condition for issuing PD A1 confirming that s/he will remain subject to the social security legislation of the state s/he were posted from. Such a worker is a posted worker in accordance with Directive 96/71/EC but without PD A1 and does not therefore appear in the reported data.

⁶ At a more methodological level, the available data only provide the number of PD A1 certificates issued in each country, but do not contain any information on the duration of postings or the hours worked.

⁷ We test this number by creating the variable using the Labour Force Survey. Using this method the LFS estimates that in 2014 there were roughly 28,000 posted workers which is only slightly lower than PDA1 estimate. We create a proxy for posted workers which assumes a respondent is a posted worker if he or she has moved to the UK more recently than he or she started working for their current employer. Note this estimate includes people who are resident in the country for a year or more, or intend to stay for twelve months or more, so seasonal and temporary migrants are excluded. It may pick up people who have permanently moved to the UK

⁸ Posting of workers in the European Union and EFTA countries : report on A1 portable documents issued in 2012 and 2013, published December 2014

⁹ Ibid

¹⁰ Ibid

17. There is very little information on duration of posted workers. An European Commission study (2014)¹¹ stated that the duration of the posting period was on average 100 days in 2013. We use 100 days as a lower estimate to indicate that postings can be shorter than a year¹². The Directive is clear that postings are temporary but it sets no upper limit as to the length of time that a posting can last¹³.
18. We also have little information on whereabouts of posted workers across various sectors in the UK. The Directive only requires the UK to implement Article 12 (subcontracting liability) in the construction sector. There is very little information on the distribution of posted workers across the various sectors of the economy. The PD A1 data¹⁴ states¹⁵ that there is some evidence to suggest that the majority of the workers *posted from* the UK work in the service sector¹⁶. The same data does not tell us which sectors workers who are *posted into* the UK work in.
19. To get some understanding of which sectors posted workers are based in, we refer to 2008 Labour Force Survey (LFS) quarter 2 data. Using data collected from an ad hoc Eurostat module on the LFS we estimate the sectoral distribution of posted workers¹⁷. It helps to give an indication of the distribution of the posted workers across various sectors of the economy. Based on these estimates most workers posted to the UK work in manufacturing, finance, real estate and business activities (which includes accountancy, legal, tax consultancy, management consultancy, advertising, architectural and engineering and recruitment consultancy). These LFS estimates indicate that only a small proportion work in construction (3%¹⁸)¹⁹.
20. Similar to the PDA1 data there are limitations to the LFS data. For example, the LFS data are most likely to include migrant workers as it captures people who intend to stay for twelve months or more. Given the limited evidence in this area, BIS approached its stakeholders²⁰ to gather information on the number of posted workers (and their characteristics) in the economy. The exercise only re-

¹¹ Posting of workers Report on A1 portable documents issued in 2012 and 2013, December 2014.

¹² To estimate the costs we look at annual arrears on contractors – however, to calculate the lower estimate we apportion the arrears such that they reflect a duration of 100 days (rather than a year).

¹³ There is very little information on maximum length of duration of a posted worker. LFS estimates (2014) variable, that looked at people who moved to the UK more recently than they started working for their current employer, state the average duration to be 3.6 years. The PD A1 forms apply to a maximum of 2 years.

¹⁴ In 2013 only 18 Member States provided more detailed figures on sectoral breakdown which accounts for some 54% of the total number of PDs A1 issued.

¹⁵ Posting of workers Report on A1 portable documents issued in 2012 and 2013, December 2014

¹⁶ Commission report based on 2009 E101 (now called A1 portable documents) about 99% of workers posted from UK work in the service sector. The data is missing in the 2010, 2011, 2012 and 2013 assessment

¹⁷ The variable used for the analysis was defined as follows from module questions- what was your main reason for coming to the UK? (Answer – employment), did you have a job or job offer or job offer in the UK before coming to the UK? (Answer – yes), and was this the same company you had been working for before coming to the UK? (Answer – yes). The module was not repeated in the subsequent years.

These exclude those who are self-employed.

¹⁸ These exclude self-employed workers

¹⁹ Note we only use this proxy to give us indication of proportion of posted workers working in construction sector and do not use it to give us an indication of number of posted workers. The estimate based on Q2 2008 (pre-recession) has not been used estimate volume of posted workers as Q2 of 2008 is not a representative time period (and dates back by 7 years). In addition, this variable are most likely to include migrant workers as it captures people who intend to stay for twelve months or more. We hence do not use it to understand the volume of posted workers.

²⁰ We circulated a survey (August 2014) which yielded a low response rate (21) and hence the results could not be used for the purposes of the impact assessment.

emphasised the issue of the lack of evidence in this area. During the consultation period we will test our estimates and develop a robust evidence base, including using the consultation document itself to seek further evidence from our stakeholders (see Annex A).

Analysis of options: Article 9 (Administrative requirements and control measures)

21. Article 9 covers the information which member states may request from employers (service providers) in order to ensure effective monitoring of compliance with obligations in the 1996 Framework Directive and Directive 2014/67/EU (the ‘administrative requirements and control measures’). Any new measures under this Article may only be put in place if they are justifiable and proportionate. Paragraph 1 of Article 9 provides a list of measures that Member States may impose, including the provision of information about the parties involved in a posting situation, paperwork that must be maintained, and details of the posting, including about the work being undertaken. The Article also provides for accessible and user-friendly documents to enable employers to provide information electronically and at a distance. Where Member States put in place any of these provisions, they must be notified to the European Commission, who will then evaluate the efficacy of those arrangements.

22. The options to implement Article 9 is presented below:

- Option a₉ – No additional requirements on business to provide information
- Option b₉ – Impose control measures which would require employers in other member states to provide information on workers they post to the UK

Option a₉ - Do nothing

23. The government does not currently require posted workers to be registered either before arrival or on entry and nor does the government monitor or keep records specifically in relation to posted workers. There are, however, under the current system some exceptions where the relevant enforcement bodies have identified a need for additional, targeted information. These include:

- where the posted worker is directly employed by an agency, and
- where the posted worker is employed by a licensed gangmaster

24. Given that the UK already has control measures in place in the areas where it considered there is the greatest need this is, subject to Ministerial clearance, our preferred option. However, we also propose consulting on the option of requiring all employers posting workers to the UK to provide the competent authorities of the details of each posted worker (see below **Option b₉**).

Option b₉ - Employers to provide information on posted workers

25. Under this option an employer based in another member state that posts a worker to the UK will have to provide specific information relating to the posting before or at the time of that posting. If the UK were to go down this route, the employer will have to collect the required information (this will relate to flagging whether or the worker is a posted worker), record and supply the information. We assume it will take 30 minutes of the employer's time²¹. The total hourly labour costs are estimated to be £16.4²² (this includes wage rate and non-wage labour costs as such as national insurance contributions and other pension contribution)²³. The cost to employers if applied to 43,522 posted workers is £357K²⁴ per annum.
26. Though the employer is based in another member state, these costs have been included in the IA as the employer could be a multinational company and they could have their subsidiary business or branch in the UK. In such a case the cost incurred by the subsidiary business will be a part of burden on UK businesses. In reality, the costs realised will depend on the proportion of such multinational companies. We will be using the consultation to gauge what proportions of the businesses are multinational or exclusively based in EU member states (see Annex A).

Analysis of options: Article 12 (Subcontracting Liability)

27. This article puts in place new additional protections for posted workers in the construction sector. The protections enable the posted worker to hold the contractor of which the employer is a direct subcontractor liable for outstanding minimum rates of pay (i.e. the national minimum wage in the UK) and any other dues such as allowable expenses. This is referred to as 'subcontracting liability'.
28. There are three ways in which a person can be a posted worker. In all cases the employer will always be in another Member State:
- The employer (E) sends the employee to work for an undertaking with which it has a contract to provide services. So the posted worker will work for the contractor during the posting but will be employed by E;
 - The employer E sends the posted worker to work for another part of its undertaking in another member state;
 - The employer E is an agency and the posted worker is posted to work for a company in another member state.
29. Under Article 12, this would mean that where a direct employer failed in its responsibilities to pay the minimum wage owed to a posted worker, that worker could make a claim against the next organisation up in the supply chain (referred to as the 'contractor'). Alternatively, Member States can impose sanctions on the

²¹ Based on the Impact Assessment that looked at costs of introducing licensing arrangements for Gangmasters (operating in agriculture and related processing and packaging activities), it takes two hours for a labour provider to supply the necessary information on the phone and complete an application for a license. The information requirement here is lower as the employer only needs to flag where he is using a posted worker. Hence we estimate this to be 30 minutes of his time.

²² 4 year average of Construction supervisor hourly salary is £13.7 (ASHE). We apply 19.8% on top of that to include the non-wage labour cost

²³ Non-wage labour costs consist of 19.8% on top of wage costs. No wage labour costs encompass employers' social security contributions, vocational training costs, and other expenditure (such as recruitment costs, expenditure on work clothes, and employment taxes regarded as labour costs minus any subsidies received)

²⁴ [£16.4*43522]*30/60.

contractor to prevent fraud and abuse. One or the other option must be adopted although it is open to the Member State how to achieve it.

30. We are proposing to consult on the following options in order to implement this article.

- **Option A₁₂** - Continue as existing system (**do nothing**). This is not a viable option as if the UK does not implement the Directive correctly it could be infringed.
- **Option B₁₂** - change the rules so that a posted worker can take a claim against the contractor for underpayment of NMW through the Employment Tribunal; the Directive provides that there can be a defence of due diligence for the contractor
- **Option C₁₂** - extend the existing rules so that HMRC can approach the contractor (on behalf of BIS) for underpayment of NMW to the posted worker; again there can be a defence of due diligence
- **Option D₁₂** - introduce a sanction against the contractor if the employer does not pay NMW to a posted worker (either administered by HMRC or BIS);

31. With all of these options, the posted worker would still have access to the existing route of redress, in particular they would be able to make a complaint to HMRC about the direct employer's non-payment of the national minimum wage. The worker would only be able to recoup the underpaid wages once.

32. For **option B₁₂, C₁₂ and D₁₂** we calculate impacts for the following two scenarios

- **Scenario 1** – The provisions apply only to posted workers in the construction sector.
- **Scenario 2** - The provisions apply to all workers in the construction sector.

Option A₁₂ - Do nothing

33. Currently in the UK a posted worker has three routes to bring a claim against their employer for underpayment or non-payment of NMW wages. HMRC can enforce the NMW through a notice of underpayment and can pursue the underpayment on behalf of the worker through the Employment Tribunal or County Court. The posted worker can take their employer to an Employment Tribunal or county court for all of the wages owed.

34. Currently, where HMRC identifies that an employer owes NMW arrears HMRC will issue a notice of underpayment for those arrears under s19 of the National Minimum Wage Act 1998 ('the Act'). If those arrears remain outstanding HMRC will pursue them on behalf of the worker by commencing civil proceedings for the recovery on a claim in contract, under s19D(1)(c) of the Act. This applies to both UK and non-UK based employers. It will not be possible for HMRC to investigate and enforce NMW if an employer has disappeared. In such cases HMRC will attempt to find the employer; but it will be far more difficult to find such an employer outside of the UK. At present there is no scope within NMW legislation to pursue the contractor (organisation one up the supply chain) for NMW arrears - unless they

were deemed to be a "superior employer" as described in s48 of the Act (which will be extremely unlikely).

35. Doing nothing is not a feasible option as we may be infracted if we do not implement the Directive correctly²⁵.

Option B₁₂ – Individual right

I. Posted worker isn't paid by employer → takes case to employment tribunal against contractor

- ET accepts contractor's defence of due diligence
- ET rejects contractor's defence of due diligence, contractor liable

36. The Government could implement the Directive by introducing a right for a posted worker in the construction sector to bring a claim for unpaid minimum wages against the contractor through regulations made under section 2(2) European Communities Act ECA 1972. The worker could take a claim to an Employment Tribunal²⁶. The defence that the contractor had undertaken due diligence would also be introduced.

37. This would mean that in addition to their existing ability to pursue the direct employer for unpaid wages either through HMRC (for NMW) or in the court or tribunal, the posted worker would be able to bring a claim against the contractor.

Costs to business

38. To estimate costs under this option, we first look at a scenario where the option is only applied to posted workers in the construction sector (**scenario 1**) and then a scenario where it is applied to all workers in the construction sector (**scenario 2**)²⁷.

39. Although posted workers will retain their ability to make claims against their direct employer for unpaid NMW through HMRC under this option, these estimates assume that none of them will have done so. As the option will not allow for double recovery from the employer and contractor, the likelihood is that a proportion of

²⁵ http://ec.europa.eu/atwork/applying-eu-law/docs/c_2014_6767_en.pdf. . The penalty can be a lump sum or a periodic payment or both. There is a minimum lump sum which for the UK is £9,938,000

²⁶ For purposes of the analysis we have only been able to model impacts of cases going to the employment tribunal (not county courts). We will use the consultation process to gather further information on the county court process.

²⁷ We understand that the EU Commission has stated in the working groups on the implementation of the PWED that the protections in article 12 PWED are not limited to posted workers and it would be discriminatory to implement on that basis.

posted workers will use the HMRC route and will therefore not bring claims against the contractor through the Employment Tribunal. The costings also assume that contractors will contest cases brought against them and they do not take account of any subsequent contractual claim that a contractor may choose to take against the direct employer for recovery of costs. In actual fact, a contractor may decide to pay the unpaid wages rather than contest the case. This would reduce the costs of this option to the level of the unpaid wages (up to the level of NMW). We will be using the consultation (see Annex A) to gather information on the possible behaviour of the contractor (i.e. whether it will choose to contest or pay or chase the direct employer for recovery of costs)

40. Estimates in 2014 show that 0.9% of all employees in the UK labour market are paid below the National Minimum Wage²⁸. If we applied the proportion to posted workers then this implies that 0.9% of 43,522 posted workers are paid below the NMW. Applying our analysis of the LFS which shows that 3% of those workers are employed in the construction sector, we estimate that 12 posted workers in the construction sector are paid below the NMW.
41. It is not likely that all these employees will bring a claim to the employment tribunal against the contractor. They will most likely only bring a claim against the contractor under this option if HMRC fails to recover their unpaid NMW from the employer. There is little evidence to inform how successful HMRC will be in extracting unpaid wages from the employer (for 0.9% of the employees paid below the NMW), especially in a case where the employer is based in another EU member state²⁹. Given this lack of evidence we look at a worst case scenario, i.e. HMRC is unsuccessful in chasing the employers of the 12 posted workers and they all take their contractor to court.
42. For tribunal claims lodged on or after 6 May 2014, it is a legal requirement, (unless an exemption applies), for a claimant to have made an Early Conciliation notification to Acas. Once a notification has been made, participation may be refused by either the employee or employer. Early Conciliation encourages a facilitated discussion between employer and employee with the help of Acas staff. If the dispute is not resolved through early conciliation then the claimant can bring the case to the Employment Tribunal. At the Employment Tribunal the employee will incur a fee and there can be three possible outcomes of the case. It can either be a) withdrawn (this includes either private settlement or complete withdrawal of claim by the employee), b) settled or c) successful.

²⁸ ASHE is a survey of employees completed by employers which we can use to look at workers earning at or below the NMW rate. This is not a complete measure of non-compliance however as there are legitimate reasons to be paid below the NMW, for example those living in accommodation provided by the employer. Results from ASHE are based on a one per cent sample of employee jobs in Pay-As-You-Earn income tax schemes from HMRC and are collected in April. Information on contractual hours and pay is collected and the hourly rate is calculated by ONS. If it is below the NMW, this will show up as non-compliance in the data.

²⁹ Data suggests that in 2013 HMRC achieved 47% strike rate (found arrears) for 1455 investigations. This is because some of the 1455 cases include mis-reporting of arrears. We cannot use this estimate to say HMRC will be successful in chasing 47% of the employers who are not paying 0.9% of the employees the NMW as a) in this particular case the direct employers will be based abroad pulling down the success rate) and b) we are not comparing like to like – unlike the 1455 cases, there is a high likelihood that the 0.9% of the employees are getting paid below the NMW (pushing up the higher strike rate if we take into account low levels of mis-reporting)

43. Early conciliation is free of charge for the individual³⁰ and we assume all 12 employees will go for early conciliation. However, even if the case is not resolved at this stage, not all cases will proceed to employment tribunal due to the impacts of fees. The latest Acas statistics on early conciliation shows that 16% of cases are settled through Acas (equating to 2 of the 12 posted worker cases) and 23% end up in employment tribunal (equating to 3 cases)³¹. According to the Employment Tribunal Statistics for Quarter 3 2014, of the 187 NMW complaints that were disposed of³², 29% were settled and 8% were successful. Applying these percentages to the 3 cases estimated to go to tribunal, we estimate that a maximum of one case (37% of 3) will be successful through the tribunal process. Hence, *including claims settled through ACAS (2) and cases successful at Employment Tribunal (1)* we have in total 3 cases that would result in payment of wages if this *applied to only posted workers in the construction sector*. Based on 2014 ASHE data, for those in non-compliance the mean average hourly arrears were £0.92 and the average annual arrears was £2,319³³. From paragraph 17, we know that the duration of a posting can be as short as 100 days. This implies the wage payment range is 2K³⁴ to 7.4K per annum.
44. If this applied to all construction workers (1.35m³⁵) then based on the methodology above we get 12,150 employees paid below the NMW (0.9% of 1.35m). As per the assumption in para 41, we assume that post HMRC investigations all of these workers are not paid by their direct employer and they will bring a claim against the contractor for non-payment for NMW. 1,944 (16% of 12,150) settled through Acas and 2,795 (23% of 12,150) ending in employment tribunals of which only 37% were successful and settled (1,034³⁶). This implies roughly 2,978 (1,944 plus 1,034) will result in NMW arrear payments. Using the annual NMW arrears we estimate the costs to contractors (in terms of wage payments) will be £6.9m per annum.
45. Note that although these payments represent a cost to the contractor, they benefit the posted workers³⁷. We assume the posted worker is resident in UK during the entire time of employment (covering the period he or she was under paid). Hence these benefits are transfer payments from the contractors to the workers.
46. In addition there will be costs to employers and employees of going to an Employment Tribunal. These were estimated to be £3,900 per employer and £1,400 per employee in the published Early Conciliation Impact Assessment

³⁰ However there might be a small time costs to individuals and employers. These have not been quantified for the purpose of the IA

³¹ April to Sept 2014 <http://www.acas.org.uk/index.aspx?articleid=5204>

³² This includes comments that are decided upon, withdrawn and settled. We only look at one year's data to take into account post introduction of fees (fees were introduced in June 2013)

³³ BIS analysis of ASHE data. This ASHE estimates are annual and are based on a snapshot in April. So it covers the entire year but underpayment could happen part of the year (as long as it brings them below the hourly rate of NMW – see footnote 26).

³⁴ We apportion the annual costs to represent 100 days of arrears. 100/365 multiplied by 6.6K

³⁵ LFS 2014 (excludes self-employed)

³⁶ 37% of 2795

³⁷ Posted workers are EU workers and might return to their country. However, for the purposes of the IA we assume they are resident in UK when the payment is made.

document³⁸ (for the purpose of our analysis these figures have been updated using 2014 prices)³⁹. The costs to employers and employees under scenario 1 (posted workers in construction) and scenario 2 are summarised in the table below

TABLE 2: IMPACT ON EMPLOYERS AND EMPLOYEES

Scenarios	Costs to Employers (per annum)	Benefits/Costs to Employees (per annum)
Scenario 1 – posted workers in construction	Wage payments (costs): £2K to £7.4K ET/Acas costs: £12.1K ⁴⁰	Wage payments (benefits) – £2K to £7.4K ET/Acas costs: £4.3K ⁴¹
Scenario 2 – all workers in construction	Wage payments (costs) – £6.9m ET/Acas costs – £11.3m ⁴²	Wage payments (benefits): £6.9m ET/Acas costs: £4.1m ⁴³

47. This option foresees a due diligence defence for the contractor, however the estimates above do not take into account a scenario where the contractor is able to demonstrate it has carried out a sufficient level of due diligence. In this scenario, the contractor would not be liable for the unpaid NMW. For this reason, and as a result of the assumptions set out at paragraph 39, it could be argued that the estimates represent a worst case scenario.

48. It has not been possible to estimate the costs of due diligence as it has been difficult to ascertain the level of due diligence already being carried out under business-as-usual or indeed whether it is the ‘right’ level of due diligence that is required to satisfy an Employment Tribunal⁴⁴. Good commercial practice would be for all companies to undertake fitness checks on subcontractors prior to contract award. For example, industry guidance does recommend a formal contractor pre-qualification process. This may be a short interview or perhaps a pre-qualification questionnaire (PQQ) depending on the size and complexity of the project. We will be using the consultation (see Annex A) to understand the level of checks that the employers already carry out on contractors.

49. Note the option would improve the level of due diligence carried out in the sector, however it could have a secondary impact of changing behaviours of contractors. For example, they may be less inclined to use subcontractors employing posted workers or increase “retentions”, the practice of keeping back a percentage of the

³⁸ These are median costs and include of time spent on the case, travel and communication costs and the costs of representation

³⁹ £4047 and £1453 updated using GDP deflator

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284042/bis-14-585-early-conciliation-impact-final.pdf

⁴⁰ 3 x £4047

⁴¹ 3 x £1453

⁴² 2795 x £4047

⁴³ 2795 x £1453

⁴⁴ The costs of due diligence could be high depending on due diligence requirement defined in legislation or guidance. We will be using the consultation to inform what these requirements will be.

sub-contractors payments to cover unforeseen liabilities. Also, there might be financial implications on contractors employing posted workers through increase in insurance requirements.

Costs to government

50. There were a total of 60,855 early notification cases (April to December 2014) that went through Acas⁴⁵ and the costs to Acas per case per case is estimated to be £47⁴⁶. The costs to Employment Tribunal per case are estimated to be £3,321 (where the case goes to Employment Tribunal hearing), £612 (case where outcome is post claim conciliation) and £415 (other cases)⁴⁷.
51. Based on the unit cost estimates above, the costs to Acas and Employment Tribunal under scenario 1 (posted workers in construction) and scenario 2 (all workers in construction) are estimated in the table below. Under scenario 1, we estimate 12 cases will go through early conciliation and 3 individual cases will go to employment tribunal. We estimate that only one case will result in wage payments (settled rather than successful⁴⁸) and assume the others are withdrawn. To calculate the impact on the exchequer we apply the post conciliation settlement costs (£612) to all 3 cases. This is done to reflect that even if the 2 cases where withdrawn they will still impose some burden on government resources.
52. Paragraph 44 states that under scenario 2, 12,150 paid below the NMW and all of them go through early conciliation (incurring a cost of £47 per case) and 2,795 end up in employment tribunals of which only 37% were successful (233 successful imposing a cost of £3,321 per case and 810 settled through post claim conciliation imposing a cost of £612 per case).

TABLE 3: IMPACT ON EXCHEQUER

Scenarios	Total Exchequer costs
Scenario 1 – posted workers in construction	£2.2K ⁴⁹
Scenario 2 – all workers in construction	£2.9m ⁵⁰

⁴⁵ <http://www.acas.org.uk/index.aspx?articleid=5204>

⁴⁶ The Final Impact Assessment on early conciliation stated the costs to be £2.8m

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284042/bis-14-585-early-conciliation-impact-final.pdf

⁴⁷ The early conciliation consultation IA has the first two figures £3,200 and £590, in table 1 page 6-7. These include judges fees salary and expense. The other cases figure £400 is found as the cost of receipt and allocation in table A2. All the figures shown below are uprated by the GDP deflator.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52611/13-539-early-conciliation-a-consultation-on-proposals-for-implementation-impact.pdf

⁴⁸ Note that 29% of 3 (=1) cases were settled and 8% of 3 (less than one or zero) where successful.

⁴⁹ (12x£47) + (3x£612)

⁵⁰ (12150x£47)+(810x£612)+(223x£3321)+Remaining that were withdrawn (2795-810-223) x £612

Option C₁₂ - HMRC enforcement

53. Under this option we would increase HMRC's powers so that they were able to investigate and enforce against the contractor in addition to the employer. The posted worker would be able to complain to HMRC about not being paid by the employer. HMRC would investigate the employer and contractor and if they found failure to pay the NMW, HMRC would approach the employer or contractor for unpaid wages up to the level of the National Minimum Wage.

PW isn't paid by employer → PW seeks his/her wages from employer → PW complains to HMRC → HMRC investigates (contractor and employer) and finds failure to pay NMW → HMRC approaches contractor for non-payment of wages up to level of NMW.

- **HMRC finds contractor liable, contractor pays**
- **Contractor refuses to pay and claims due diligence, case goes to court/Employment Tribunal. Defence of due diligence is rejected (contractor pays) or accepted (HMRC loses the case)**

54. HMRC officers would be able to require the contractor to produce a copy of their service provision contract as well as any relevant records concerning the length of time posted workers had been working on the contract and rates of pay etc. If HMRC considered that the contractor should be liable for the underpayment, it would issue a notice stating the underpayment owed. The contractor would have to challenge this within a set time frame in the Employment Tribunal. If the Employment Tribunal was not satisfied by the contractor's defence of due diligence it would order the contractor to pay the arrears. If the contractor did not challenge and did not pay, HMRC would be able to take action against the contractor to recover the sums due to the employee.

55. One of the outstanding questions under this option that we will be consulting on is the point at which HMRC would pursue the contractor rather than the direct employer. It is a fundamental principle of UK employment law that the direct employer is liable for the employment rights of their workforce and we would need to be careful not to undermine this principle in the application of this model e.g. through the creation of any false incentives for the employer to hold out payment in the knowledge that the contractor would become liable. This IA however, has been costed for the worst case scenario and the costs represent the total potential wage liability. However, what the costs do not encompass is the cost to the business of engaging with HMRC during the investigation (providing paperwork etc) or the costs of defending any case, including the cost of due diligence.

Costs to business

56. As per paragraph 41, 12 workers in the construction sector will not be paid the NMW under scenario 1 and 12150 under scenario 2. 2014 ASHE data states that for those in non-compliance the mean average hourly arrears were £0.92 and the average annual arrears was £2319. The table below presents the wage payments under scenario 1 and 2

TABLE 4: IMPACT ON EMPLOYERS AND EMPLOYEES

Scenarios	Costs to Employers (per annum)	Benefits/Costs to Employees (per annum)
Scenario 1 – posted workers in construction	Wage payments (costs) – £7.6K to £27.8K	Wage payments (benefits) – £7.6K to £27.8K
Scenario 2 – all workers in construction	Wage payments (costs) – £28.2m	Wage payments (benefits) – £28.2m

57. As under option B, here too there will be costs to businesses of carrying out due diligence. It has not been possible to quantify these costs. In addition, there will be further costs to business a) from aiding HMRC with the investigations and b) from defending the case in the employment tribunals if they decided to appeal (i.e. employers might claim they have carried out the necessary level of due diligence). Both these components of costs are likely to be low. Under the current system, a very small number of employers contest the amount of arrears/penalty owed (appeals lodged in 2012/13 was numbered 23⁵¹). In addition, as per paragraph 39 employers might choose to pay the arrears or chase the direct employer to recover their costs. We will be using the consultation (see Annex A) to gather more information to help us understand the likely response of the employers and quantify these costs.

Costs to government

58. The annual spend for HMRC for March 2015 was estimated to be £9.03m⁵². We estimate the costs per case, which we estimate to be roughly £3160⁵³. Applying these estimates to 12 (scenario 1) and 12150 (scenario 2) individual cases of arrears we calculate the enforcement costs. These are presented in the table below⁵⁴.

⁵¹ In 13/14, 1,455 employers were subject to a completed investigation by HMRC's NMW compliance teams, of which 655 (47%) were found not to be paying the national minimum wage. Of the 655 employers 23 appealed. Page 8 of <http://www.parliament.uk/documents/impact-assessments/IA14-14Q.pdf>

⁵² HMRC spend data. Note part of the budget also goes towards staff not involved with compliance

⁵³ This is based on HMRC data. 2013/14 ended with 1044 cases open, 2213 closed in-year, and finished 2014/15 with 1166 cases open; also it was also identified 522 queries should not be taken forward for investigation. This equates to action being taken on 2857 cases in-year (Closed cases + (2014/15 open cases - 2013/14 cases) + queries not taken forward). If we divide the spend of £9.03m by 2857, it equates to £3160. It should also be noted this rough figure is for civil enforcement only; if a case is then referred for prosecution we would be looking at additional costs of at least £50,000 per case. We do not account for costs per worker only per case.

⁵⁴ Note that these estimates represent per case rather than per worker and there may be more than one worker per case. However, given the lack of evidence HMRC advised that the per case estimate is a relatively more accurate representation of costs to government (as it is based on real time evidence). We will be working with HMRC during consultation to refine these estimates further.

TABLE 5: IMPACT ON EXCHEQUER

Scenarios	Total Exchequer costs
Scenario 1 – posted workers in construction	£37.9K
Scenario 2 – all workers in construction	£38.4m

59. These estimates do not take into account the additional costs to HMRC and HMCTS if the contractor claims due diligence and appeals to an Employment Tribunal. We believe that these impacts are likely to be low as only small proportion of cases ends up in employment tribunals⁵⁵. We will be gathering further information during consultation.

Option D₁₂ – Sanctions

60. Under this option we would introduce a sanction against the contractor in the event of fraud or abuse. The process would entail a complaint by the posted worker against their direct employer to HMRC. HMRC would investigate the employer and, if satisfied that there had been underpayment of the NMW, would pass the matter to the enforcing authority. If the prosecution is successful, the court may impose a penalty.

PW isn't paid by employer → PW complains to HMRC and HMRC investigates and finds failure to pay NMW → evidence passed to prosecuting authority → prosecution is successful; the contractor will be subject to the fine imposed by the Court.

61. Note that under this scenario the penalty amount is a transfer from the employer to the Exchequer. In other words the wage payments, which are a cost to the employers, are payments received (benefits) to the exchequer. Under this scenario the worker would be reliant on the existing HMRC enforcement mechanisms against the direct employer to recover their unpaid NMW and also his rights of action to claim unpaid wages in the court or tribunal.

Costs and benefits to employer and exchequer

62. The level of the sanction would need to be determined post consultation but for the purposes of the IA, we have assumed that it would be set at £5K per firm⁵⁶. There is very little information to tell us where these workers who are getting paid below the NMW (12 under scenario 1 and 12,150 under scenario 2) are located, or in other words how many firms are likely to be affected. We assume the number of firms

⁵⁵ In 13/14, 1,455 employers were subject to a completed investigation by HMRC's NMW compliance teams, of which 655 (47%) were found not to be paying the national minimum wage. Of the 655 employers 23 appealed. Page 8 of <http://www.parliament.uk/documents/impact-assessments/IA14-14Q.pdf>

⁵⁶ This is based on the assumption that we are implementing using powers in the European Community Act 1972 where the maximum amount of fine per offence on summary conviction is £5K (per offence)

affected is proportionate to the number of employees affected (or being paid below the national minimum wage). So 0.9% of the firms in the construction sector are likely to face these sanctions under scenario 2. There are 262,526 enterprises in the construction sector⁵⁷ implying the cost to business is £11.8m⁵⁸ (262,562 x 0.9%x £5K). Similarly, under scenario 1, the costs to business are estimated to be £11.7K.⁵⁹ Note that these are transfer payments from business to the exchequer.

63. It has not been possible to quantify these costs. In addition, there will be further costs to business a) from aiding HMRC with the investigations and b) from defending the case. We will be using the consultation to gather more information to help us quantify these costs (see Annex A).

64. We assume the costs to the prosecuting authority to enforce the sanctions are similar to the costs in option C (HMRC enforcement).

TABLE 6: IMPACT ON EMPLOYERS AND EXCHEQUER

Scenarios	Total costs to employer	Cost/benefit to Government
Scenario 1 – posted workers in construction	Sanction paid - £11.7K	Sanction received - £11.7K Costs of enforcement - £37.9K
Scenario 2 – all workers in construction	Sanction paid - £11.8m	Sanction received - £11.8m Costs of enforcement - £38.4m

Costs to government of implementing other aspects of the directive

65. Article 5 of the Posted Workers Enforcement Directive requires Member States to make available information about the compulsory employment rights ('compulsory terms and conditions of employment'⁶⁰) which employers must comply with whilst an employee is posted there. The information must be provided free of charge, be clear, transparent, in an accessible format and in the most appropriate language. This will involve creating a specific landing page (on www.gov.uk and [nidirect](http://nidirect.gov.uk)⁶¹) for posted workers, which provides clear information on employment rights and assembles the suite of government information webpage links in one place so that all the information is readily available. In addition articles 6, 7 and 10 of the Directive that imposes costs to government from cross border information exchange. Cooperation arrangements will be needed between the relevant UK

⁵⁷ 2013 estimates. <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-341896>

⁵⁸ 1.1% of 262526 multiplied by £5000

⁵⁹ There are only 12 out of 1.35m workers in the construction sector who gets paid below the national minimum wage. If we assume the number of workers affected is proportionate to number of firms affected then 3 firms are affected under scenario 2 (14/1.35m x 262.526). As each firm gets a sanction of £5000 the total costs to business for 3 firms affected is £15000.

⁶⁰ In the UK we understand 'terms and conditions of employment' to mean those terms agreed between an employer and employee to provide services – usually as set out in a contract of employment. This may contain terms which go beyond statutory minimum rights, such as a rate of pay above the national minimum wage. Whilst those terms and conditions which go beyond the statutory minimum are not covered by the Enforcement Directive, they are enforceable through an Employment Tribunal.

⁶¹ <http://www.nidirect.gov.uk/>

competent authorities to meet the information exchange and inspection requirements in articles 6, 7 and 10 and the cross-border enforcement of civil penalties in Chapter 6. There may be some administrative costs incurred by the competent authorities in putting in place a mechanism for responding to requests and possibly in making them. We will be carrying out further work on these arrangements ahead of publishing the government's implementation plans.

Summary of the costs across the options

66. The summary of the quantified costs and benefits of all the options are presented in the table below. Our preferred option in the IA does not go beyond the minimum EU requirements. It relies on existing domestic provisions in the UK to implement the Directive except for Article 12. To implement article 12 under our preferred option, we apply it only to posted workers in the construction sector (scenario 1). For purposes of consultation we also look at a scenario where it is applied to all workers in construction (scenario 2). However, the latter is not a preferred option given the financial implication on businesses and the uncertainty on whether 'non-discrimination'⁶² does apply to article 12.
67. The costs and benefits are discounted over a period of 10 years using a discount rate of 3.5% (as per Green Book guidance)⁶³.

⁶² Posted workers should not be given more rights than other workers. We understand that the EU Commission has stated in the working groups on the implementation of the POWED that the protections in article 12 PWED are not limited to posted workers and it would be discriminatory to implement on that basis.

⁶³ <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

TABLE 7 : SUMMARY OF QUANTIFIED COSTS AND BENEFITS

Scenario 1 – Article 12 only applies to posted workers in construction			
<i>Options</i>	<i>Costs</i>	<i>Benefits</i>	<i>Net Present Value (PV Benefits-PV Costs)</i>
Option 1 (Preferred) <ul style="list-style-type: none"> Implement Art 12 via creation of individual rights 	Contractors: £14.2K to £19.6K (p.a.) Exchequer: £2.2K(p.a.) Employees: £4.3K(p.a.) Total costs : £20.7 to 26.2K (p.a.) Present Value Costs: £193K to £243K	Employees: £2K to £7.4K (p.a.) Present Value Benefits: £19K to £69K	-£174K
Option 2 <ul style="list-style-type: none"> Implement Art 12 via the HMRC enforcement route 	Contractors: £7.6K to £27.8K (p.a.) Exchequer: £37.9K (p.a.) Total costs: £46K to £66K (p.a.) Present Value Costs: £424K to £612K	Employees: £7.6K to £27.8K (p.a.) Present Value Benefits: £71K to £259K	-£353K
Option 3 <ul style="list-style-type: none"> Implement Art 12 via the HMRC Sanctions route 	Contractors: £11.7K (p.a.) Costs to Exchequer: £37.9K (p.a.) Total costs: £49.6K (p.a.) Present Value Costs: £462K	Sanction received by the Exchequer: £11.7K (p.a.) Present Value Benefits: £109K	-£353K
Option 4 <ul style="list-style-type: none"> Implement article 9 by requiring employers to provide information on all posted workers Implement Art 12 via creation of individual rights 	Contractors: £371K to £377K(p.a.) Exchequer: £2.2K(p.a.) Employees: £4.3K(p.a.) Total costs: £377.7K to £383.2K(p.a.) Present Value Costs: £3.52m to £3.57m	Total benefits:£2K to £7.4K (p.a.) Present Value Benefits: £19K to £69K	-£3.5m
Option 5 <ul style="list-style-type: none"> Implement article 9 by requiring employers to provide information on all posted workers Implement Art 12 via the HMRC Enforcement route 	Contractors: £365K to 385K (p.a.) Exchequer: £2.2K(p.a.) Total costs: £403K to £422K Present Value costs: £3.75m to £3.94m	Employees: £7.6K to £27.8K Present Value Benefits: £71K to £259K	-£3.7m
Option 6 <ul style="list-style-type: none"> Implement article 9 by requiring employers to provide information on all posted workers Implement Art 12 via the HMRC Sanctions route 	Contractors: £369K (p.a.) Costs to Exchequer: £37.9K (p.a.) Total costs: £407K (p.a.) Present Value Costs: £3.8m	Sanction received by the Exchequer: £11.7K Present Value Benefits: £109K	-£3.7m
Scenario 2 – Article 12 applies to all workers in construction			

<i>Options</i>	<i>Costs</i>	<i>Benefits</i>	<i>Net Present Value (PV Benefits-PV Costs)</i>
Option 1 <ul style="list-style-type: none"> Implement Art 12 via creation of individual rights 	Contractors: £18.2m (p.a.) Exchequer: £2.9m (p.a.) Costs to employees: £4.1m (p.a.) Total costs : £25.2m (p.a.) Present Value Costs: £234.4m	Employees: £6.9m (p.a.) Present Value Benefits: £64.3m	-£170m
Option 2 <ul style="list-style-type: none"> Implement Art 12 via the HMRC enforcement route 	Contractors: £28.2m (p.a.) Exchequer: £38.4m (p.a.) Total costs: £66.6m (p.a.) Present Value Costs: £620.2m	Employees: £28.2m (p.a.) Present Value Benefits: £262.5m	-£357.7m
Option 3 <ul style="list-style-type: none"> Implement Art 12 via the HMRC Sanctions route 	Contractors: £11.8m (p.a.) Exchequer: £38.4m(p.a.) Total costs: £50.2m(p.a.) Present Value Costs: £467.8m	Sanction received by the Exchequer: £11.8m(p.a.) Present Value Benefits: £110.1m	-£357.7m
Option 4 <ul style="list-style-type: none"> Implement article 9 by requiring employers to provide information on all posted workers Implement Art 12 via creation of individual rights 	Contractors: £18.6m (p.a.) Exchequer: £2.9m (p.a.) Costs to employees: £4m (p.a.) Total costs: £25.5m Present Value Costs: £237.8m	Employees: £6.9m (p.a.) Present Value Benefits: £64.3m	-£173.4m
Option 5 <ul style="list-style-type: none"> Implement article 9 by requiring employers to provide information on all posted workers Implement Art 12 via the HMRC Enforcement route 	Contractors: £28.5m (p.a.) Exchequer: £38.4m (p.a.) Total costs: £66.9m (p.a.) Present Value Costs: £623.5m	Employees: £28.2m (p.a.) Present Value Benefits: £262.5m	-£361m
Option 6 <ul style="list-style-type: none"> Implement article 9 by requiring employers to provide information on all posted workers Implement Art 12 via the HMRC Sanctions route 	Contractors: £12.2m (p.a.) Exchequer: £38.4m(p.a.) Total costs: £50.6m(p.a.) Present Value Costs: £471.1m	Sanction received by the Exchequer: £11.8m(p.a.) Present Value Benefits: £110.1m	-£361m

F. FUTURE ENFORCEMENT

68. Article 20 requires Member States to set out the penalties and fines which relate to the measures in the Enforcement Directive, and the Commission must be notified of these by 18 June 2015 which is the deadline for transposing the Directive. The UK will set out the applicable penalties as listed in Annex B and, following consultation, should the government decide to introduce a penalty in relation to article 12 this will also apply and be included in the notification.

E. MONITORING AND EVALUATION

69. Article 24 sets out the terms under which the Commission will review the implementation of the Enforcement Directive and criteria to measure its effectiveness. The review will take place no later than 18 June 2019.

G. RISK SECTION

70. Along with all other Member States we will, however, need to decide how to introduce measures on the new subcontracting liability requirement for the construction sector – this is the most controversial part of the Enforcement Directive and will be a significant question for consultation. We think we will need to legislate in this area.

71. We will also need to consider whether the monitoring and control measures that are currently in place – mainly through the records which employers are required to keep – are sufficient to aid compliance.

72. There is a risk that the EU Commission may bring infraction proceedings against the UK if it decides that the UK has not implemented the Directive correctly or on time. These proceedings can be combined with fine proceedings if the UK fails to implement at all by the 18 June 2015 transposition date.

73. Finally, we will want to ensure that the UK's Competent Authorities are able to meet the requirements for mutual assistance from other Member States and co-operate and take enforcement action where an employer has breached the rights of a posted worker whilst they are working in the UK. We are setting up a cross-government working group to ensure that joint working protocols are in place to deal with complex queries and that the right authorities are responsible for handling and co-ordinating responses to requests related to the recovery of financial penalties. This is an administrative measure.

H. SMALL AND MEDIUM BUSINESS TEST

74. The main impact on small and medium sized businesses arises from the proposed introduction of Subcontracting Liability (Article 12) which intends to address the issue of non-payment of the National Minimum Wage to Posted Workers. We have little data to identify the whereabouts within the contracting chain businesses are located although we would expect larger sized businesses to be found higher up the chain. The overall impact from implementing Article 12 is likely to be small if it is only restricted to posted workers in the construction sector. However, any impact would be proportionately greater on small and medium businesses, especially if there is a policy decision to extend this to all workers in construction.

I FAMILY TEST

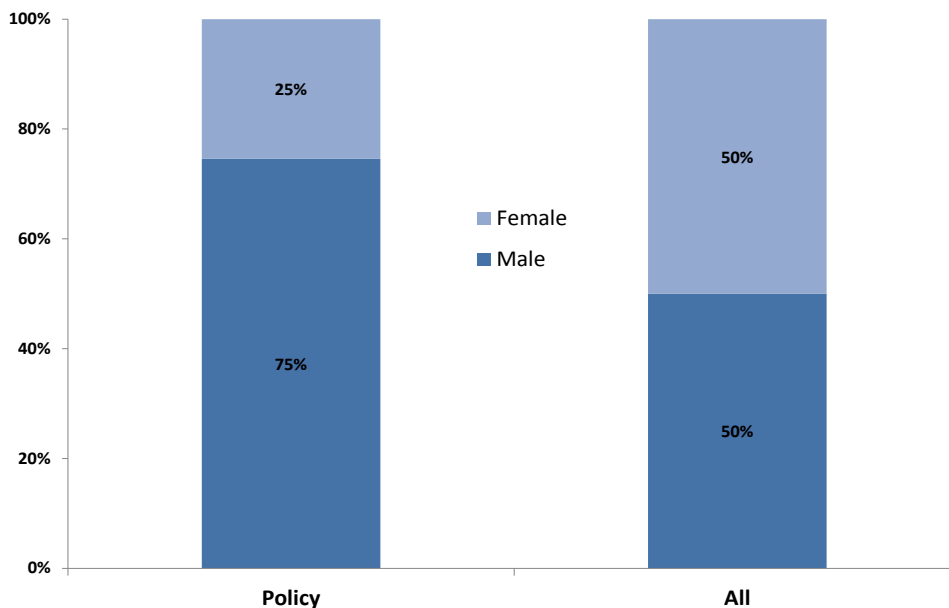
75. Data shows that posted workers are likely to be aged between 25 and 40 and Article 12 will help enforce posted workers' rights through an entitlement to make a claim against a contractor for payment of NMW. This will have a positive impact on families of these workers. Conversely, it could be argued that contractors will be less keen to hire posted workers because of the potential liability, which can have a negative impact on the workers future income.

J.EQUALITIES ANALYSIS

76. The analysis in this section looks at the proportion of posted workers broken down by protected group compared against the proportion of workers in each protected group in the labour market. Data limitations impacts on our ability to examine the majority of the protected groups with the exception of age and gender. We have used the Labour Force Survey (LFS¹) to look at the protected characteristics. There are however limitations when attempting to use LFS data to identify those impacted by this measure. We are unable to reliably analyse the data into sub-categories with the exception of age and gender due to the small sample sizes.

Gender

Chart 1: Proportion of workers impacted by gender

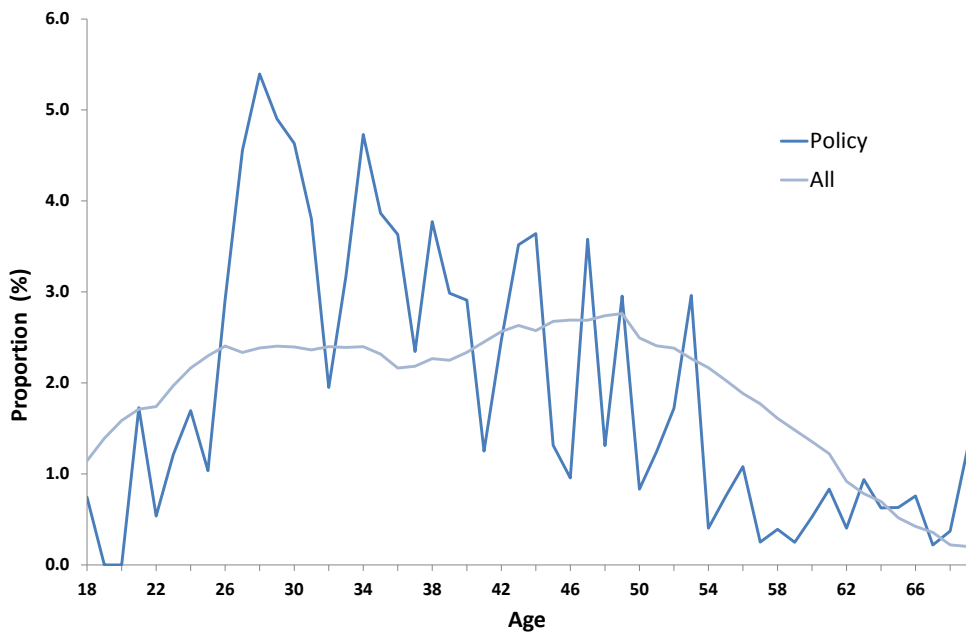


77. Chart 1 illustrates the proportions of posted workers in the UK affected by this policy (using 2008 Labour Force Survey data) compared to all workers by gender. It indicates within the UK there were three times as many male posted workers as female posted workers.

Age

¹ Using 2008 Apr-Jun LFS data.

Chart 2: Proportion of workers impacted by age



78. Chart 2 illustrates the age distribution of posted workers relative to all workers. Whilst highlighting the data quality issues it appears to show that those aged 25-40 make up a larger proportion of posted workers compared to the distribution for all workers.

Other Data

79. The small sample sizes obtained via the Labour Force Survey data mean that it is not possible to produce any robust information on the following: race, religion, disability and marriage and civil partnership. We will attempt to collect improved data on these and other personal characteristics through consultation.

Other protected characteristics

80. There is little data published on both gender reassignment or sexual orientation. Separate papers published by the Office for National Statistics (ONS)² acknowledged the information gap and tried to suggest ways forward. On gender reassignment, ONS scoping work suggested the use of a combination of attitude surveys, administrative data and specialist surveys to more adequately fulfil user requirements.

81. Data published in a report by the Gender Identity Research and Education Society (GIRES)³ in 2009 estimated that there may be between 300,000 and 500,000 people who experience some degree of gender variance. By 2010 the number of people estimated to have presented for transition treatment was 12,500 and thought to be growing at a rate of 11% per annum. The median age for treatment was 42.

82. ONS' paper, which considered inclusion of a sexual orientation question for the 2011 Census⁴ used a figure of 5-7% of the population which Stonewall⁵ felt was a reasonable

² <http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/equality-data-review/trans-data-position-paper.pdf>

³ <http://www.gires.org.uk/assets/Research-Assets/Prevalence2011.pdf>

⁴ <http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/sexual-identity-project/2011-census-consultation--background-information-on-sexual-identity.pdf>

estimate. The absence of robust data for these two characteristics means that we are unable to establish whether there are any disproportionate impacts on these groups.

ANNEX A: Questions to be asked during consultation

QUESTION 1:

- a. Is the estimated number of posted workers in the construction sector right?*
- b. Is there another source of evidence that we should take into account?*

⁵ The lesbian, gay and bisexual charity - <http://www.stonewall.org.uk/>

QUESTION 2:

The Directive introduces a new requirement to enable posted workers in the construction sector to claim unpaid wages up to the national minimum wage from the contractor one up the supply chain from their direct employer (known as 'subcontracting' or 'joint and several' liability). The IA estimates that 0.9% of posted workers in the construction sector are getting paid below the National Minimum Wage. This is based on the proportion of UK workers who get paid below the NMW (across all sectors).

- a. Is the use of 0.9% appropriate, or is the proportion of workers getting compensation below the national minimum wage higher in the construction sector?*
- b. Is the use of 0.9% appropriate, or are more posted workers getting paid below the national minimum compared to UK workers?*

QUESTION 3:

Is there any evidence on the duration of postings?

QUESTION 4:

- a. What is the average wage and skill of the posted worker (across all sectors of the economy)?*
- b. How does this relate to their rate of pay at home and compared to their fellow workers on-site in the UK?*

QUESTION 5:

In your experience, how likely is it for the subcontractor to not pay wages to the posted worker?

- a. During the course of their employment, has there been an instance when the posted worker has not been paid wages by the subcontractor? If so, what is the extent of arrears and over what time period do they accrue?*
- b. How would removing direct employers' sole liability for the payment of the national minimum wage affect their behaviour and in what way?*
- c. How would removing direct employers' sole liability for the payment of the national minimum wage affect the contractor's behaviour and in what way?*

QUESTION 6:

The impact assessment provides some information on the sectoral distribution of posted workers. Do you have any information on the distribution of posted workers across sectors? If so, can you please provide the details.

QUESTION 7:

- a. What type of business tends to post workers into the UK and where are these businesses located?*
- b. Are they mainly part of multinational firms or are they small firms?*

QUESTION 8:

What are the main organisational characteristics of UK Construction projects using posted workers provided by employers established in the EEA?

QUESTION 9:

- a. How are employers and posted workers (including the ones established in the EEA) used?*
- b. How central is this to the organisation's business strategy?*

QUESTION 10:

- a. *Are there any checks carried out (i.e. due diligence, fitness-for-purpose test, pre-qualification questionnaires) when setting up subcontracting arrangements?*
- b. *What information is gathered through such checks?*

QUESTION 11:

- a. *What would the costs to contractors be for helping HMRC with investigations (as a proxy you could provide the time it took, if relevant, to aid HMRC on National Minimum wage investigations depending on the length of the case)?*
- b. *How likely is it that the contractor will appeal against a decision taken by HMRC (state enforcement route) or by the prosecuting authority (sanction route)?*

QUESTION 12:

Are there any costs or benefits that the Impact Assessment has not taken into account?

ANNEX B: UK Terms and Conditions of Employment which must be extended to workers posted to the UK under Article 3 of the Framework Directive

Compulsory condition	UK Legislation in which it is contained	EU legislation on which UK legislation is based	Enforcement	Competent Authority
Maximum work periods and minimum rest periods	Working Time Regulations 1998 (WTR) Working Time Regulations (Northern Ireland) 1998 soon to be (2015) (WTRNI)	Directive 2003/88/EC	Employment Tribunal Health and Safety Executive, Office of the Rail Regulator, Driver and Vehicle Standards Agency, GLA Industrial Tribunal and Fair Employment Tribunal hearings - Northern Ireland (NI) Health and Safety Executive (Northern Ireland) District Councils Civil Aviation Authority Department of the Environment	HSE
Minimum paid annual holidays	WTR (WTRNI)		Employment Tribunal GLA Industrial Tribunal and Fair Employment Tribunal hearings (NI)	BIS
Minimum rates of pay	National Minimum wage Act 1998, Social Security Administration Act 1992 (Social Security Administration (Northern Ireland) Act 1992)	Regulation 883/2004 and 987/2009 on the coordination of Social Security systems,	HMRC, Employment Tribunal, or County court GLA Industrial Tribunal and Fair Employment Tribunal (NI)	HMRC
Conditions on hiring out of workers	Employment Agencies Act 1973, The Conduct of Employment Agencies		Employment Tribunal HMRC on National Minimum Wage	BIS DEL

	<p>and Employment Businesses Regulations 2003 and the Agency Workers Regulations 2010 Section 27 of the Gangmasters (Licensing) Act 2004 [which disapplied the Employment Agencies Act 1973]; Section 12 of the Gangmaster (Licensing) Authority Regulations 2005, and The Gangmasters (Licensing Conditions) Rules 2009 Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (as amended in 2008 and 2010) The Agency Workers Regulations (Northern Ireland) 2011</p>		<p>EAS on breaches of the Employment Agencies legislation;</p> <p>EAI on breaches of the Employment Agencies legislation; in NI</p> <p>The Gangmasters Licensing Authority for gangmasters operating in the shellfish, agriculture and horticulture sectors</p> <p>HSE for Working Time,</p>	<p>Home Office (GLA)</p>
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Health, safety and hygiene at work	Health and Safety at Work Act 1974		GLA	HSE
Protections for pregnant women, maternity and paternity leave, time off for ante-natal appointments, parental leave, shared parental leave right to request flexible working	<p>Employment Rights Act 1996, (The Employment Rights) (Northern Ireland) Order 1996)</p> <p>Maternity and Parental Leave etc. Act 1999, (Maternity and Parental Leave etc. Regulations (Northern Ireland 1999)</p> <p>Section 205 Public Health Act 1936, (Section 85, Factories Act (Northern Ireland) 1965)</p> <p>Equality Act 2010 protection for pregnancy and maternity Sex Discrimination (Northern Ireland) Order 1976</p>	European Communities Act 1972, Directive 92/85/EC (pregnant workers)	<p>Employment Tribunal</p> <p>GLA</p> <p>Industrial Tribunal and Fair Employment Tribunal (NI)</p>	GEO
Protections for children under 16 and young people under 18 at work	WTR 1998 (for young people) (WTRNI)(for young people)	Directive 94/33/EC (for young people)	<p>GLA</p> <p>Industrial Tribunal and Fair Employment Tribunal (NI)</p>	
Protection for Whistleblowers	<p>Public Interest Disclosure Act 1998</p> <p>Public interest Disclosure (Northern Ireland) Order 1998</p>		<p>Employment Tribunal</p> <p>Industrial Tribunal and Fair Employment Tribunal (NI)</p>	

<p>Non-discrimination, equal opportunities, equal treatment of those with protected characteristics in relation to employment</p>	<p>Equality Act 2010 and Equality Act 2006 Disability Discrimination Act 1995 Sex Discrimination (Northern Ireland) Order 1976 The Race Relations (Northern Ireland) Order 1997 The Fair Employment and Treatment (Northern Ireland) Order 1998 Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 The Employment Equality (Age) Regulations (Northern Ireland) 2006</p>	<p>Directive 2000/78/EC; and 2006/54/EC and 2000/78/EC The Equal treatment Directive 2006/54/EC, The Employment Equality Framework Directive 2000.78.EC, the Racial Equality Directive 2000/43/EC</p>	<p>Employment Tribunal Equalities and Human Rights Commission Industrial Tribunal and Fair Employment Tribunal (NI) Equality Commission (NI)</p>	<p>GEO EHRC (has enforcement powers for the Equality Act 2010)</p>
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