

Enforcement of the Posted Workers Directive

Department for Business, Innovation and Skills

RPC rating: fit for purpose

Description of proposal

Posted workers are individuals employed in one EU Member State, but sent by their employer on a temporary basis to carry out work in another Member State. Some Member States raised concerns regarding the implementation of the Posted Workers Directive. To respond to these concerns, an Enforcement Directive requires Member States to implement processes by which posted workers can enforce their rights. The Department proposes to achieve this by enabling construction workers posted to the UK to pursue their UK-based contractor through an employment tribunal for any outstanding pay in order to bring their compensation in line with the UK national minimum wage.

Impacts of proposal

UK-based contractors may face claims from individuals who are not currently paid at least the national minimum wage. Using EU reporting data on the number of posted workers, Labour Force Survey information on the proportion of those working in construction and Annual Survey of Hourly Earnings (ASHE) data on proportion of workers paid less than the national minimum wage, the Department estimates that around 1,400 posted workers work in the construction industry, of which around 18 (1.3%) are likely to be paid less than the minimum wage in each year.

The Department estimates that five UK-based contractors will face costs of paying underpaid past wages and tribunal/conciliation costs in relation to the 18 underpaid workers as a result of the transfer of liability from the posting business to the contractor. This is based on data on the outcomes of early conciliation and employment tribunals in relation to minimum wage cases and is expected to cost between £19,400 and £27,800 each year in total. The Department estimates that the public sector costs will be around £22,000 a year from tribunal costs and the provision of information. Employees are also expected to face some costs as a result of taking cases through tribunals. On this basis the Department expects the proposal to have a small net cost to society (a negative societal net present value).

The RPC is able to validate the estimated equivalent annual net cost to business (EANCB) of £0.02 million. Based on current working assumptions, the RPC expects

that this will be a non-qualifying regulatory provision that will not score under the business impact target since the proposal originates from the EU.

Quality of submission

The IA provides sufficient information to support the assessment of the cost to business. The IA also sets out how the Department has responded to the comments raised in our previous opinion on the consultation stage IA. This includes providing a greater explanation for the use of percentage of workers likely to be eligible to make a claim (revised to 1.3% from 0.9% in the previous IA). The IA acknowledges consultation responses highlighting the risk of under reporting of non-compliance associated with the uses of ASHE data when estimating the rate of non-compliance with the minimum wage in the construction industry overall and in relation to posted workers. The Department, however, argues that the findings of the research carried out alongside the consultation suggest the estimated scale is broadly right and, without other robust evidence or a proportionate way of collecting more robust data, the approach appears reasonable in this instance.

Before publication, the IA should include reference to whether proposals relating to the national living wage will result in changes to the expected impacts of the implementation of the Directive. In particular, it should discuss the extent to which future changes to minimum wages could result in a higher proportion of posted workers being brought into scope of the Directive.

Initial departmental assessment

Classification	Non-qualifying regulatory provision (EU)
Equivalent annual net cost to business (EANCB)	£0.02 million
Business net present value	- £0.22 million
Societal net present value	- £0.41 million

RPC assessment¹

Classification	Non-qualifying regulatory provision (EU)
EANCB – RPC validated	£0.02 million

¹ The RPC validation of the estimated equivalent annual net cost to business (EANCB) and assessment of whether the measure is a qualifying regulatory provision are based on current working assumptions.

Opinion: Final stage IA
Origin: European
RPC reference number: RPC-3128(1)-BIS
Date of implementation: June 2016

Small and micro business assessment	Not required (European origin)
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