
Modern working practices - extending to dependent contractors (non-employee workers) the right to a written statement of employment particulars

Department for Business, Energy and Industrial Strategy

RPC rating: fit for purpose

The impact assessment (IA) is now fit for purpose as a result of the Department's response to the RPC's initial review. As first submitted, the IA was not fit for purpose.

Description of proposal

According to the official definition, both employees and workers who do not enjoy full employee status (hereafter referred to as "workers") have employment contracts, but the latter do not have as many rights as employees.¹ In particular, employers are required to provide employees with a written statement that sets out their main conditions of employment - such as the frequency and amount of pay, hours of work and holiday entitlement - within two months of starting work.

The Taylor Review of Modern Working Practices² highlighted that the workers do not have the right to a written statement, leaving some individuals with worker status without transparent information that sets out their main terms of employment. The lack of written statement could lead to uncertainty around workers' rights and entitlements, potentially disadvantaging them relative to employees.

In light of this finding, the proposal aims to improve transparency and clarity of information for all workers as soon as they start a job. The Department notes that this would be beneficial to both individuals and employers.

The Government's preferred option is to:

- (1) legislate to extend to workers the right to a written statement;
- (2) make access to a written statement as of the first day of work a right for both employees and workers; and

¹ Definitions of the main types of employment status can be found at: <https://www.gov.uk/employment-status>

² ² The Taylor Review of Modern Working Practices, July 2017
[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf]

(3) expand the information required on a written statement.

Impacts of proposal

Number of businesses and individuals affected

The IA estimates that there are around 1.37 million to 1.70 million non-employee workers in the UK. The lower bound is based on government-commissioned research from 1999, which estimates that five per cent of all employed people are non-employee workers. The upper estimate is derived from more recent research by the Chartered Institute of Professional Development (CIPD) in 2015, which estimates that 21 per cent of all employees on zero-hour contracts are workers. The Department notes that it is reasonable to apply this proportion to other forms of atypical workers which is “... *defined in this instance as anyone that is not a full-time, permanent employee, and not self-employed.*” (page 24) The IA uses a central estimate of 1.54 million for the number of workers in the UK. The Department has undertaken a sensitivity analysis for the low and high estimates of workers to indicate how different assumptions would affect the total cost to business (annex 2).

The proposals are expected to have different impacts on employers of employees, and workers. Existing employees will not need new written statements; however, employees are entitled to request an updated written statement to reflect changes in their terms and conditions. Only new workers will be entitled to written statements; existing workers would have no right to request one. Written statements will, in future, have to include seven new mandatory pieces of information, outlined on page 29 of the IA. Employers would incur costs from familiarisation and, implementation, which includes the cost of amending written statements.

The Department estimates a net present value (NPV) of - £213.5 million, a business NPV of -£213.3 million and an equivalent annual net direct cost to business (EANDCB) of £20.4 million, which is comprised of familiarisation and implementation costs. The methodology used by the Department to estimate these costs is explained below.

Familiarisation costs

The IA assumes that all employers would familiarise themselves with the proposed regulatory changes. The IA estimates that, according to data from the Business Population Estimates 2018³, there are 1.4 million private-sector employers. Using

³ <https://www.gov.uk/government/statistics/business-population-estimates-2018>

provisional data from the 2018 Annual Survey of Hours and Earnings (ASHE)⁴, the IA estimates the average hourly pay of a manager and a human resources manager to be £22.64 and £24.66, respectively. It also assumes that 30 minutes' familiarisation by a manager or an HR manager should provide sufficient time for them to absorb and disseminate information on the new requirements. Using Eurostat figures, the IA uplifts the estimated hourly costs by 20.66 per cent to cover non-wage labour costs. Overall, the Department estimates a one-off familiarisation cost of £19.0 million to businesses, £1.2 million to non-profit enterprises and £0.2 million to the public sector.

Implementation costs

The Department explains that the implementation costs consist of both transition (one-off) and ongoing costs. Transition costs include producing new written statements for workers who have not received them and amending existing written statements for new employees or existing employees who request it. Ongoing costs cover the production of written statements for new workers and employees entering the labour market or moving jobs.

Transitional cost of producing/ amending written statements

The turnover of both employees and workers would trigger new costs for business, for either providing a new written statement or for adding additional information to existing written statements. The number of employees and workers who would need a new or amended written statement is estimated using "quarterly labour market flow" data from the ONS⁵, between 2001 and 2018. The IA assumes, using data from the Recruitment and Employment Confederation (REC), that workers could have up to three different assignments per year. The Department, therefore, assumes that workers and employees make around 454,000 and 2.25 million job moves each year, respectively. As the IA assumes that all existing workers' posts will have a written statement created by year four, these costs are expected to be transitional.

At the consultation stage, the Department provided a range for the cost of producing a new written statement of £56 to £162. The present IA has revised this estimate to be £57 as the Department explains that the upper estimate is likely to have overstated the cost of external services and goods as written statement templates are available to download free.

⁴ <https://ec.europa.eu/eurostat/documents/2995521/8791188/3-09042018-BP-EN.pdf/e4e0dcfe-9019-4c74-a437-3592aa460623>

⁵ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourforcesurveyflowsestimatesx02>

The Department consulted businesses to improve the robustness of its estimate; asking employers whether they might seek legal advice to produce written statements. The consultation yielded few responses; just under half said they would use legal advice and nearly all of those that did said they would use it “sometimes” rather than “always”. The IA also explains that government, ACAS and independent HR specialist bodies provide templates for written statements. Overall, the Department concludes that legal advice is not necessary for complying with the regulations. However, the Department does provide a discussion and sensitivity analysis on this (annex 1). In supporting the figures used for the sensitivity analysis, the Department has explained that most businesses that choose to use legal advice are likely to include this advice in an annual legal review and/or be larger businesses that use in-house services (with evidence from consultation supporting this assertion).

The cost of amending a written statement is estimated based on an *ORC* study, which assumes that including the additional information required would take ten minutes per employee. Using 2018 ASHE data, the IA estimates the average cost for ten minutes of a human resources manager’s time at £4.76.

The cost of producing a new written statement for workers is estimated in two parts. First, the number of annual job moves by workers is multiplied by the cost of producing a written statement. In addition to that cost, the number of annual job moves by workers is multiplied by the cost of making the amendment. The cost of amending written statements for employees is calculated by the number of annual job moves by employees multiplied by the cost of the amendment. Overall, the Department estimates the total cost of producing and amending written statements to be £208.8 million over ten years (undiscounted).

Ongoing costs of producing new written statements

There will be additional costs to businesses associated with new employees and workers entering employment. Using data on the 15-year average annual growth in overall employment as a proxy for the growth in the number of workers, the Department estimates that there is a 0.7 per cent (gross) increase in new workers each year. The additional impact of new workers flowing into the labour market each year is estimated by multiplying the number of workers entering employment each year by the cost of producing a written statement. The IA estimates that there would be around 111,000 additional workers by the end of the appraisal period, which results in a total cost of around £6.3 million over ten years (undiscounted). The Department expects the cost of new employees entering the labour market to be negligible as written statements should already exist and would require only very minor amendments to be applicable to the next employee.

Other costs

The IA identifies two other sources of cost: employees requesting revised written statements and the requirement of the day-one right (provision of a written statement by the time employment starts). Given that amendments to written statements are relatively common, the IA states that it is unlikely there will be a significant number of employees requesting additional updates.

Consultation responses suggest that 81 per cent of individuals starting work receive a written statement before, or on, their first day of work. The Department has not quantified the cost associated with this requirement but expects it to be negligible.

Wider impacts

The IA explains that workers will benefit from increased transparency regarding their terms of employment and working conditions. The Department does not expect the measure to have significant wider labour market impacts. The IA accepts that making employment slightly more burdensome may create a risk that businesses will decrease recruitment. This is not, however, expected to be significant because the individual cost to employers is relatively low.

Small and micro business assessment

The IA uses the CIPD's "employer and employee perspectives" 2015 report⁶ to assess that small and micro businesses are amongst the least likely to use zero and short-hour contracts and, therefore that they will face a lower proportion of the implementation costs compared with medium-sized to large business. Familiarisation costs, however, are likely to fall disproportionately on smaller businesses. The Department sets out in the IA its approach to mitigating impacts on small businesses, in particular by updating templates and guidance on written statements.

Quality of submission

Issues addressed following RPC's initial review

The Department has adequately addressed the red-rated point and the three 'areas for improvement' identified in the RPC's initial review. This is discussed in more detail below.

⁶ <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/terms-conditions/zero-hours-views-report>

Exclusion of possible legal costs from the EANDCB

The Department's original submission included a cost of legal advice in the NPV but not in the business NPV or the EANDCB because it considered the impact to be indirect. The RPC's initial review concluded that this potential impact did not match the RPC criteria⁷ for indirect impacts and that, if this were a cost of meeting the regulatory requirement, then it would be direct. The RPC's initial review said that the Department must either include this cost in the EANDCB or provide a sufficient justification for why it should not be treated as a direct cost to business. The RPC's review also stated that the Department must justify the hourly cost assumption used. The Department has now provided sufficient justifications, as described in the 'impacts' section above, on both of these points. The Department's revised approach of providing a narrative discussion and sensitivity analysis on this issue, rather than including it in the NPV, is considered appropriate.

Small and micro business assessment

In line with the RPC's comments on areas for improvement, the Department now describes measures to mitigate impacts on small and micro businesses, such as provision of online guidance and templates.

Clarification on comparison of costs against consultation stage estimates

The assessment now provides a sufficient explanation of the change in costs between consultation and final stage IAs. The Department explains that the cost is at the lower end of the estimated range because the estimated cost of producing written statements was reduced, as explained in the 'impacts' section above. Secondly, implementation of the measure was revised to minimise upfront burdens. Consultation-stage cost estimates were based on the assumption that all workers would be provided with new written statements and all employees would receive updated written statements when the right came into effect. The proposals will require workers to be provided with new written statements only when they move into a new job (either changing jobs or entering the labour market for the first time); existing employees would receive an updated written statement only if they request it.

⁷RPC Case Histories – guidance on direct versus indirect impacts
https://regulatorypolicycommittee.weebly.com/uploads/7/8/8/5/78855130/latest_consolidated_case_histories_iv.docx (pages 24-29)

Clarification on familiarisation cost

The IA has clarified further the familiarisation costs and explains that they include the cost of business disseminating the additional information requirement more widely in the business.

Other comments

The RPC also made a number of comments on the consultation stage IA⁸. In general, the Department has provided more evidence to strengthen the robustness of its estimates and used consultations with stakeholders to support its assumptions. More specifically:

- *Clarification of additional requirements and their associated costs.* The Department has now provided an explanation of the new information that needs to be included and justifies the assumption that 10 minutes is needed to provide it. The IA explains that, whilst 10 minutes is a relatively short amount of time, the majority of the additional information should already be provided in some form, so it should be straightforward to move the additional information into a new written statement.
- *Lack of evidence for the assumption that most workers work in the same role for less than two months and that the numbers of affected employers and workers are similar.* In support of this assumption, the IA now includes *REC* data indicating that the average assignment length for temporary agency workers was 17 weeks. Further, the Department uses *ONS* data on job-to-job moves to estimate average annual job moves by employees and workers.
- *Monetisation of the cost of making the requirement a day-one right.* The IA states that the monetisation of this requirement has not been possible but explains why this cost is expected to be negligible.

Following the improvements made to the IA since the RPC's initial review, the IA is now considered to be fit for purpose.

The IA would, however, benefit from addressing the following points:

⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701010/extending-right-to-written-statement-non-employee-workers-ia.pdf

Written statement is not mandatory for existing workers

The IA states that only workers moving into new jobs (either by changing jobs or entering the labour market for the first time) will be entitled to a written statement. “Existing non-employee workers will not need to be issued with a new written statement and they will have no right to request one.” (page 14) The IA could be improved by explaining more clearly how the proposal balances minimising burdens on business and maximising achievement of the objectives of the proposals, in particular why workers remain disadvantaged compared to employees in this respect.

Further clarification on cost estimates

The IA notes that the cost of producing written statements may be overestimated due to a potential “deadweight”, whereby employers using a mix of employee and worker contracts already provide written statements to their non-employee workers because it is less burdensome to provide them for everyone. Consultation responses support this assumption but the IA would benefit from providing further clarity on this issue and how it affects the analysis presented.

Justification of using annual growth rate as the proxy for the growth in workers

The Department uses a 15-year average annual growth rate in total employment to estimate the growth in the number of workers each year. The IA would benefit from explaining further the reasoning for this approach and the time period used.

Monitoring and evaluation plan

The IA should state how the measure will be monitored and evaluated; given the scale of the measure, this would facilitate a proportionate post-implementation review.

Departmental assessment

Classification	Qualifying provision
Equivalent annual net direct cost to business (EANDCB)	£20.4 million
Business net present value	-£213.3 million
Societal net present value	-£213.5 million

RPC assessment

Classification	Qualifying provision (IN)
Equivalent annual net direct cost to business (EANDCB) – RPC validated	£20.4 million (2014 prices; 2015 base year)
Business impact target score	£102.0 million
Small and micro business assessment	Sufficient
RPC rating of initial submission	Not fit for purpose

Regulatory Policy Committee