

The Agency Workers (Amendment) Regulations 2019 - repealing the Swedish derogation

Lead department	Department for Business and Trade
Summary of measure	The Department is reviewing the Government's amendment of The Agency Workers Regulations 2010, which repealed the 'Swedish derogation'. The Swedish derogation originally allowed employees to use pay-between-assignments contracts in exchange for agency workers giving up their right to pay parity with permanent employees after 12 weeks.
Submission type	Post-implementation review
Implementation date	6th April 2020
Department recommendation	Keep
RPC reference	RPC-DBT-26140-PIR-(1)
Opinion type	Formal
Date of issue	31 March 2026

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The recommendation in the PIR is supported by a proportionate body of evidence, demonstrating that the regulations have been positively received by stakeholders. The Department acknowledges some limitations in available wage data and the PIR could be improved by considering alternative approaches to address these limitations. The PIR would also benefit from considering the methodological assumptions set out in the original IA.

¹ The RPC opinion rating is based on whether the evidence in the PIR is sufficiently robust, as set out in the better regulation framework, to support the departmental recommendation. RPC ratings are fit for purpose or not fit for purpose.

RPC summary

Category	Quality ²	RPC comments
Recommendation	Green	The PIR recommends keeping The Agency Workers (Amendment) Regulations 2019, and their repeal of the Swedish derogation. The Department provides evidence to underpin this recommendation, demonstrating that the repeal has been broadly successful, with stakeholders and Employment Agency Standards (EAS) inspectors providing positive feedback.
Monitoring and implementation	Satisfactory	The Department has developed a good range of qualitative and quantitative data to support the recommendation, including a 2025 stakeholder consultation, interviews with EAS inspectors and survey responses from agency workers. However, the PIR could be improved by providing more context on the respondents of the consultation and surveys. The PIR acknowledges limitations in the wage data but could consider alternative approaches to address these.
Evaluation	Weak	The review references the original objectives of the policy. The PIR qualitatively discusses policy assumptions but would benefit from expanding this to consider the methodological assumptions set out in the original IA. The PIR briefly considers the impact of the regulations on small and micro businesses (SMBs) but could provide a more-detailed assessment.

The 2020 regulations include a requirement for the Secretary of State to review them from time to time and to set out in a published report — a post-implementation review — the conclusions of the review carried out. The first report was required to be published before the end of the period of five years, beginning with the day on which the regulations came into force, and was therefore required to be published before 6th April 2025. It appears, therefore, that publication of the present PIR is later

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

than the commitment in the legislation, and we recommend the Department undertakes the next periodic review within the five-year deadline.

Summary of proposal

The Agency Workers (Amendment) Regulations 2019 (the 2019 regulations) amended The Agency Workers Regulations 2010.

The original 2010 regulations allowed for the option to use pay-between-assignments contracts. Here, temporary work agencies could directly employ agency workers and agree to pay them a minimum amount during gaps between work assignments in exchange for agency workers giving up their right to pay parity with permanent employees after 12 weeks. This was known as the ‘Swedish derogation’.

The Taylor Review of Modern Working Practices (2017) (‘the Taylor Review’) reported widespread abuse of the Swedish derogation and the former Government made the decision to repeal the Swedish derogation, revoking the use of pay-between-assignment contracts for agency workers.

Recommendation

The PIR recommends keeping The Agency Workers (Amendment) Regulations 2019, and their repeal of the Swedish derogation. The Department provides evidence to underpin this recommendation, demonstrating that the repeal has been broadly successful, with stakeholders and Employment Agency Standards (EAS) inspectors providing positive feedback that the repeal has achieved its aims and confirming that they would not want to see a return of the Swedish derogation. The recommendation is also supported by evidence from the JobsAware and 2021 Agency Worker survey responses, where a high proportion of agency workers reported awareness of the regulations.

However, there are data limitations which prevent the review from conclusively determining whether agency workers receive equal pay (objective 3). The PIR has done well to acknowledge this, explaining how the analysis of Labour Force Survey (LFS) pay data is purely descriptive and that more complex methods would be required to isolate the specific effects of the repeal on agency worker pay. The PIR also suggests that further regulatory work could strengthen understanding of equal pay entitlement. The Department could provide more detail on this regulatory work, considering proposing it as an amendment, particularly as the PIR also evidences an appetite for agency workers to receive equal pay from day one.

The PIR could also strengthen its recommendation to keep the repeal by including further detail on the origins of the Swedish Derogation, and its initial rationale. This would help to demonstrate why the repeal was required.

Overall, the recommendation in the PIR is fit for purpose and based on sufficient evidence, particularly as the regulations are well received by stakeholders.

Additionally, the recommendation is supported by the Employment Rights Act (ERA) 2025 which, when introduced alongside the repeal, will enhance protections for agency workers, including pay.

Monitoring and implementation

Proportionality

The original IA estimated that the repeal of the Swedish derogation would generate an EANDCB of £265.3 million (2016 prices). The PIR should reference this estimate, uprating the costs to 2026 prices. The PIR has provided a substantial range of evidence and analysis, which is consistent with the RPC's proportionality guidance for a PIR for a high impact measure. Furthermore, the PIR has been able to identify some of the shortfalls of the data available and evidence gaps.

Range of evidence

The Department has developed a good range of qualitative and quantitative evidence to assess the effectiveness of the policy and support the recommendation to keep the repeal. Evidence has been sourced from the Department's 2025 stakeholder consultation, which found overwhelmingly positive feedback from businesses and worker representatives, as well interviews with EAS inspectors which suggested the repeal of the derogation contributed to equal treatment for agency workers. The PIR also makes use of survey responses from agency workers through JobsAware and the Agency Worker Survey and draws on data from Advisory, Conciliation and Arbitration Service (ACAS), finding that there has been no sizeable change in the number of employment tribunal (ET) or early conciliation (EC) cases related to the repeal.

The Department helpfully sets out the questions used in the stakeholder engagement. However, the PIR could be improved by providing more context on the respondents of the consultation and surveys, including the number and sector of business groups consulted, clarifying whether the responses include those from small or micro businesses. The review would also benefit from providing more detail on the actual qualitative and quantitative data received during the consultation and survey exercises.

The review also references international comparisons to evidence the recommendation to keep the repeal, noting that Malta has also repealed the derogation, with Northern Ireland announcing plans to do so. The PIR could be improved by expanding these high-level comparisons to consider a deeper review of literature in support of keeping the repeal.

Gaps in evidence justified

The Department also conducted analysis of LFS microdata to evidence the impact of the regulations on pay differentials between agency and non-agency workers in the UK labour market. Whilst this evidence finds that the pay gap for agency workers and non-agency workers has not narrowed since the repeal, indicating its ineffectiveness, the Department identifies limitations with this evidence. For instance, pay levels can be influenced by a range of factors (e.g. education, job type, skill level, broader economic change) which may cause wage differentials to persist over time. Furthermore, the LFS data also relies on self-reporting of pay by both agency and non-agency workers, with potential reliability issues. This limitation was also apparent in the JobsAware survey responses, where the question on whether the respondent had been paid equally was considered unusable due to the number of respondents who left the question blank or were ineligible to answer it. This, in combination with the overall unrepresentativeness of the survey, has weakened the range of evidence available from agency workers. The PIR would benefit from addressing this, clarifying whether there was any other usable evidence gathered in these surveys, or suggesting further methods for understanding the impact on agency workers. For instance, the Department could consider drawing on the Annual Survey of Hours and Earnings data from the Office for National Statistics to address self-reporting reliability gaps in the existing evidence base. Whilst this dataset may not be directly applicable as its standard industry and occupation classifications may not align with agency worker status, the PIR could be improved by explaining this to justify against using it.

The Department explains the evidence gap on wages, stating that further work needs to investigate additional factors driving reported disparities in pay between agency workers and those employed directly. However, the PIR could benefit from expanding on this, considering the alternative approaches the Department might take to accurately identify causation in assessing wage differentials. This could include identifying future research methods, such as a case study approach to more directly understand the impact of the repeal on agency worker wages.

Furthermore, the PIR does not identify how many workers were employed on Swedish derogation contracts prior to the repeal, nor does it track what happened to this specific population. Without baseline data on affected workers, the review cannot assess whether they transitioned to better contractual arrangements, experienced deterioration in terms, or exited agency work entirely. The review would benefit from clarifying whether any data exists on the pre-repeal population and, if not, acknowledge this as a limitation on the ability to evaluate distributional impacts.

Evaluation

Consideration of policy objectives

The review references the original objectives of the policy, stating that the regulations were aiming to prevent businesses abuse of the Swedish derogation, ensure equal treatment for agency workers and address their two-tier pay structure. As they stand, these objectives are quite high level, and the review would benefit from discussing whether the objectives remain effective. Furthermore, the objectives could be made more 'SMART' (i.e. specific, measurable, achievable, realistic and timely).

Unintended consequences

The PIR states that the Department is not aware of any significant unintended consequences associated with the repeal of the Swedish derogation. Despite this, the PIR does well to consider how the repeal might have had an impact on the number of unfair dismissal claims relating to the Agency Worker Regulations, utilising ACAS data to conclude that the impact of this regulation was either positive or neutral, given the negligible change in the number of EC/ET cases related to the repeal.

The Department also discusses the possible unintended impact of the repeal incentivising businesses to cancel assignments on or around the 12-week point. Despite EAS enforcement officers indicating this possibility through the interviews, the PIR does not have significant evidence to suggest this has been a widespread issue in practice. The PIR could provide further detail on this possible constraint which could limit the impact of the repeal, particularly as the ERA has kept the 12-week threshold and does not include a stronger pay transparency obligation. Furthermore, the PIR could consider the enforcement powers available to the EAS, and whether these will be effective in getting compensation for agency workers, if necessary.

Original assumptions

The PIR explains that the main assumption underpinning the effectiveness of the policy change is awareness and compliance of the repeal, from agency workers and their employment businesses. The review draws on survey evidence to suggest that awareness of the right to equal pay after 12 weeks is high amongst workers. However, there are significant issues surrounding compliance, with the data showing that wage differentials for agency workers after the 12-week threshold have not narrowed as intended.

The review would benefit from expanding this qualitative discussion of policy assumptions to consider the methodological assumptions set out in the original IA, which estimated an EANDCB of £265.3 million. In particular, the PIR could conduct a quantitative assessment of the assumptions made during the cost-benefit analysis, using any available data to compare and update the estimates costs and benefits. For a high-impact measure, the review should assess whether actual costs aligned with expectations and, where data permits, update the estimates to reflect observed implementation experience.

Small and micro businesses (SMBs)

The PIR briefly considers the impact of the regulations on SMBs, referencing EAS interview responses indicating businesses using pay-between-assignments contracts felt aggrieved at the time of the repeal, but those who had a variety of contracts were able to absorb the change more easily as they just lost one contract type. In addition, the stakeholder roundtables found that smaller agencies not part of accredited bodies may be at a disadvantage when adapting to changes in employment models. This suggests there may be a disproportionate cost to SMBs.

However, the degree to which the Department was able to engage with SMBs during their stakeholder engagement is not clear. The review would benefit from setting out how many of those in the affected industries consulted were SMBs and therefore best placed to discuss the specific issues faced. In the absence of any survey data, the Department could consider using other methods to assess the number of SMBs impacted by the regulation, and whether they were disproportionately impacted. This could include considering whether any mitigations for any SMBs might have been appropriate, using international considerations.

Regulatory Policy Committee

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